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The County Bench and Crime in Sussex 1775 - 1820

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Thesis submitted for the Master of Philosophy Degree  
of the Open University.

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Stephen Roger Wilson.

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## The County Bench and Crime in Sussex 1775 - 1820

### Abstract.

This thesis is based primarily upon the records of the Sussex Court of Quarter Sessions and more especially upon the gaol calendars contained in the Quarter Session Order Books. Themes are pursued within the framework of the judicial business of the Court. The introduction considers the nature and limitations of the documentary material available to the student of eighteenth century crime. The first chapter presents an analysis of the workings of the Sussex Court of Quarter Sessions and considers both the judicial and administrative functions of the Court. The second chapter is concerned with theft and seeks to cast some light on the relationship between larceny and rural depression, particularly in the aftermath of the French Revolutionary and Napoleonic Wars. In the third chapter the impact of high grain prices, particularly during the 1790s, is considered, and attention is drawn to the ways in which the gentry handled the disaffection generated as a result of dearth. The game laws provide the basis of chapter four and the impact of game legislation within the County is considered. Attention here focuses upon the summary proceedings of the justices acting out of sessions since most game law offenders were brought up before the individual magistrate. The various offences which fell under the general heading of misdemeanour are examined in the fifth chapter. Since assault and vagrancy were at the forefront of the list of misdemeanours frequently presented to the justices in Quarter Sessions these two areas form the basis of this chapter. Finally, in chapter six, the measures used by the justices to punish offenders are considered. The various developments that took place within the County's gaols and houses of correction are at the forefront of this section of the thesis.



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## INTRODUCTION

The foremost objective of this thesis has been to investigate and illuminate aspects of the criminal work of the justices of the peace in Sussex, primarily in Quarter Sessions. By basing this investigation on the criminal statistics derived from the judicial records of the Sussex Court of Quarter Sessions, primarily during the periods 1775 - 1790; 1795 - 1805 and 1810 - 1820 sufficient chronological scope is provided for patterns and trends to emerge from the criminal proceedings of the justices. The analysis and interpretation of such trends provide an integral component of this investigation.

The investigation of crime and the eighteenth century criminal law has attracted a great deal of interest, particularly during the past decade, with the result that we are now equipped with new insights and perspectives on the nature of authority and the role of the eighteenth century criminal code. The key text, underpinning this recent reappraisal, has been provided by the contributors to Albion's Fatal Tree and in particular, by Douglas Hay's essay, 'Property, Authority and the Criminal Law'. (1) Here Douglas Hay explains the eighteenth century criminal code in terms of its ideological predominance over the populace, and identifies the processes by which this was achieved: through the emphasis on the majesty and spectacle of the Assizes, the selective application of the prerogative of mercy and the promulgation of the belief in the

1. HAY ET AL ALBION'S FATAL TREE CRIME AND SOCIETY  
IN EIGHTEENTH CENTURY ENGLAND (PENGUIN 1977)

'disembodied justice of the law' through the occasional punishment of the mighty and the 'punctilious attention to forms'.<sup>(1)</sup> Though the thesis argued by Hay and others has not escaped criticism<sup>(2)</sup>, it remains the starting point for any study of eighteenth century crime and criminal justice. Although aspects of the more general debate on eighteenth and early nineteenth century crime are beyond the immediate scope of this investigation it is only by the examination of law breaking and criminal justice in its local context that the current generalities may be substantiated, moderated or adjusted.

It is, perhaps, as well to stress from the outset that an investigation of this nature cannot pretend to offer a reliable and definitive statement as to the level of crime in Sussex at any given period. The level of unreported, unprosecuted or undetected crime, which constitutes the 'dark figure', would render such an estimate little more than guesswork. A more detailed examination of the limitations of the various sources used to provide the statistical content of this study follows. Suffice it to say that even where trends and patterns do emerge, the definitive and unequivocal conclusion, resting upon firm, reliable and corroborated statistical evidence is not the typical reward for the student of eighteenth and nineteenth century criminality. Investigations of this nature, relying as they do upon judicial records which tap a small and inestimable proportion of criminal activity, can provide little more than an indication as to the nature and extent of crime within a particular region at a given point in time.

1. HAY OP CIT p33.

2. For example John Styles' Review in THE HISTORICAL JOURNAL 20, 4 (1977) pp 977 - 981 and more recently

JOHN H. LANGBEIN 'ALBIONS FATAL FLAWS' PAST AND PRESENT No. 98 FEB. 1983.

The Quarter Session Order Books have provided the basic source material for this thesis. In particular the Gaol Calendars, which appear at the back of each session record, have provided the information upon which the statistical tables have been drawn up. Session Rolls have provided a further source of evidence, together with Indictment Books, Process Books, Treasurer's Accounts and Clerk's Minutes. In addition the Sussex Weekly Advertiser has been used, not the least as a means of recording local fluctuations in the weekly price of grain.

The Quarter Session Order Books provide a formal record of the proceedings of the Court of Quarter Sessions. The proceedings of the justices in both the Eastern and Western Divisions of the county are recorded in the same Order Books. The series for the county of Sussex comprises fifty two volumes covering the period 1642 - 1833. The Order Books contain both the administrative orders of the justices and a record of the criminal business of the court. In general the record of a sessions opens with settlement and removal orders, followed by administrative orders relating to rates, county structures such as bridges, highways, prisons and houses of correction, and all other areas of administrative business which fell under the care or control of the justices in Quarter Sessions. At the beginning of each session, and occasionally at the end, there is often entered a memoranda of enrolments. The memoranda include licences to badgers, (1), notes of dissenting or Roman Catholic meetings, gamekeeper's deputations, qualifications of justices, licences to private lunatic asylums and so on. Appeals against settlement and removal orders and against county rates occupied a great deal of

#### 1. BUYERS, CARRIERS AND SELLERS OF CORN AND VICTUALS.

the court's time, and in consequence a great deal of space in the official records of the court, by the end of the eighteenth century.

In addition to the numerous administrative orders and notes that appear in the Quarter Session Order Books each session record also contains a summary of the judicial business of the justices. This judicial section includes notes on cases traversed, verdicts of the court, fines estreated and lists of recognizances continued, discharged or forfeited. More importantly, for the purposes of this thesis at least, there also appears a Gaol Calendar which provides not only a summary of cases brought before the bench, notes on the outcome, a list of those fined by the court, a summary of recognizances, a note of cases 'filed' by justices acting out of sessions, but also a note of the punishment imposed by the court on those whom the justices considered to be in breach of the law. There are some gaps in the judicial entries in the Order Books for the mid-eighteenth century. This may be the result of a measure of laxity on the part of the clerk of the peace - as the slimness of the rolls corresponding to these sessions might suggest - or the result of a substantial decrease in the amount of work undertaken by the justices in Quarter Sessions. A further possibility is that this was a deliberate attempt to whittle down the increasing bulk of session related records.

The Gaol Calendars have provided the basic statistical foundation of this thesis. Statistical tables have been drawn up largely upon the convictions that are recorded in the Gaol Calendars. This has been supplemented, where possible, by the information that can be drawn from the Indictment Books together with the notes on cases traversed in Quarter Sessions that are recorded in the judicial section of the session records. Although this thesis relies in the main on conviction

figures, the statistical basis of Chapter 2, which is concerned with the incidence of grand and petty larceny within the County, has been extended to include all those offenders who appear in the pre-trial calendars. Thus conviction figures here are supplemented by the numbers of those acquitted and discharged by the Court. The wider statistical basis of this chapter approximates much more closely to the indictment-based studies of Douglas Hay and J. M. Beattie (1) and thus more closely represents what has become the standardized approach to such investigations.

The Gaol Calendars merely give the category of the offence for which an individual was convicted - grand larceny, petty larceny, assault or misdemeanour in most cases. However, both the entries describing the cases traversed before the bench and, up until 1789 at least, the accounts of indictments that appear in the Indictment Books, provide some useful information as to the nature of the crime, the occupation of the offender and the place of the offence, as far as this can be relied upon. The Session Rolls also contain indictments for offenders appearing at the corresponding Quarter Sessions meeting.

By the end of the eighteenth century the holding of Petty Sessions, which provided a formal forum for the hearing of minor offences amongst other aspects of county business, had become a well established and extremely useful supplement to the relatively infrequent gathering of Quarter Sessions. Petty Sessions were a more formalized

1. For example: J. H. BEATTIE 'The Pattern of Crime in England 1660 - 1800', Past and Present, No 62, 1974; and Douglas Hay, 'War, Dearth and Theft in Eighteenth Century; The Record of the English Courts', Past and Present No 95 May 1982.

and possibly more well organized means of transacting the 'out of sessions' work of justices than the seemingly arbitrary and casual 'double' justice meetings which they largely replaced (1). The proceedings of the justices acting 'out of sessions', whether individually or collectively in Petty Sessions, with regard to the hearing of cases brought before them, were usually 'filed' at Quarter Sessions and thus appear in the Gaol Calendars. However, the irregularity with which the proceedings of the justices were filed and the variable nature of the information entered in the Gaol Calendars must cast some doubt on the value of cases filed as a measure of the work of the justices of the peace outside the Court of Quarter Sessions. Nevertheless, large numbers of cases were filed in the Order Books at Various times, and with what seems to be increasing regularity during the first two decades of the nineteenth century, and these cases have been broken down and presented to provide an indication as to the activities of 'independent' justices. A substantial upturn in the number of cases filed by the justices acting out of sessions is particularly noticeable for the immediate post - Napoleonic War period.

Corresponding to the Quarter Session Order Books there is always to be found a Session Roll, for each separate sitting of the justices, apart from the joint midsummer session of 1686 where only one roll covers the proceedings. The Session Rolls provide extremely useful supplementary information with regard to particular cases and orders of justices. The documents filed on the rolls are so

1. SIDNEY AND BEATRICE WEBB. ENGLISH LOCAL GOVERNMENT FROM THE REVOLUTION TO THE MUNICIPAL CORPORATIONS ACT: THE PARISH AND THE COUNTY

(2nd EDT) LONGMANS 1924 pp 400 - 402



various that any general description cannot embrace all the contents, but the rolls generally contain the following; indictments and recognizances, presentments of the grand and other presenting juries and of parish surveyors and justices, the jury lists, various writs of summons, informations, examinations and depositions, and the gaol calendar. The presentments concern mainly nuisances such as neglect to repair roads and bridges, etc.

Apart from the Gaol Calendars and other entries both in the Quarter Session Order Books and in the Session Rolls, useful information may be gleaned from other sources that run parallel to the formal records of the court. The Clerk's Minutes, though not available after 1805, contain the informal minutes of the proceedings of Quarter Sessions. More importantly the Process Books provide a further source of documentary evidence which relates, in the main, to the lesser offences that came before the justices. Like the Indictment Books, the Process Books for the County are incomplete. They cover the period 1757 - 1763 and from 1793 onwards. In general terms a 'process' signifies everything that takes place between the beginning and the end of a prosecution. More specifically the Process Books deal with the steps that were taken to bring an individual before the bench. Various writs were issued to the Sheriff for this purpose and the nature of the writ, and the powers of the Sheriff with regard to each case, varied with the nature of the offence and the time taken by the defendant to appear. If a defendant failed to appear before the bench a summoneas or venire facias, which was issued in the nature of a summons or a warning, was followed either by a distringas or capias, requiring the Sheriff to distrain the defendant's property or to take the defendant's body in order to secure his appearance at the next sessions. The ultimate

resort was to outlawry. The Process Books were drawn up by the Clerk of the Peace for administrative convenience and these give the names of persons against whom process was issued, together with a note of the writ issued and, more often than not, a note on the outcome. However, by contrast to the Gaol Calendars and the Indictment Books, the Process Books deal with those not already in custody. This means that they do not contain the names of those who have bound themselves to appear before a subsequent sessions by providing adequate sureties, or of those already held in custody pending a hearing before the bench. Further, the majority of offences listed in the Process Books were in the nature of misdemeanours - those accused of more serious breaches of the law, particularly felons, were usually held in custody prior to indictment or else released on bail.

Limited use of the Indictment Books has been made because the series for Sussex ends in 1789. However, for the purposes of comparison, statistical tables of indictments have been drawn up from the Indictment Books where these correspond to the period investigated.

Finally in addition to sessions related records and miscellaneous papers that appear either in the rolls, or under various headings relating to some aspect or other of county business, the Treasurer's Accounts provide information on all areas of county expenditure. These accounts have proved particularly useful in relation to the study of penal reform within the county.

Virtually all of the records relating to the work of the justices in Quarter Sessions are held at the East Sussex County Record Office at Lewes. The documents relating to some aspects of prison administration, and all those relating specifically to Horsham Gaol

and Petworth House of Correction are held at the West Sussex County Record Office at Chichester, in addition to the Quarter Session Rolls for the Western Division of the county. Also, all of the Treasurer's Accounts relating to the Eastern Division of the county are at Lewes, while those belonging to the Western Division are held at Chichester.

The sheer variety and abundance of documentary material available to the student of crime and the courts in the eighteenth and early nineteenth centuries is, generally speaking, impressive. Sussex in most respects appears to be a particularly well documented county. Here the Quarter Session Order Books, the Session Rolls, Clerk's Minutes, Process Books and, for most of the eighteenth century at least, Indictment Books, provide a wealth of material that may be used to provide both a quantitative, statistical framework to the study of criminality, or to provide details about the nature of particular criminal acts and about the treatment of individual offenders. However, the sheer wealth of documentary evidence covering this field of study may well serve to obscure the serious limitations that restrict and often confound the student of early modern criminality. In the broader sense, the limitations of the entire body of documented crime must be clearly understood and conclusions drawn in the light of these limitations. In a much more narrow sense the limitations which apply to a specific set of documents deserve careful consideration if a true estimate of their value is to be obtained.

Indictment Books provide the most obvious means of investigating crime within the county. In relying on the Quarter Session Order Books to a large degree, with their descriptions of cases traversed

and their Gaol Calendars for each session, the fallibility of session related records is to a certain extent compounded. Although the lists of fines presented in the calendars, and the notes on nuisances and misdemeanours, appear to represent the total figure for cases presented to the justices, in cases of grand and petty larceny and assault it was the common, but not inevitable practice for the court to record only those cases in which the defendant submitted a plea of 'not guilty'. A further weakness of using convictions rather than indictments for the purposes of statistical analysis, it may be argued, is that the former were the end product of a selective process. Indictment was merely 'A written accusation of one or more persons, of a crime or a misdemeanour, preferred to, and presented on oath by, a grand jury'. (1). Thus indictments, in reflecting the volume of crime before the figures have been fully filtered through the judicial process with all its complexities and inherent variables, may well represent a much closer approximation to 'real' crime than the number of convictions gathered from Quarter Session records, a point in fact made by J.M. Beattie who points out that:-

because at each stage of the administrative process that leads from the reporting of a crime to the conviction and punishment of an offender the sample is reduced by the

1. A DESCRIPTIVE REPORT ON THE QUARTER SESSIONS, OTHER OFFICIAL, AND ECCLESIASTICAL RECORDS OF EAST AND WEST SUSSEX. (East and West Sussex County Council) 1954. Record Office Publications No 2 p8

operation of practices and procedures that are in their nature shifting and inconsistent, modern opinion inclines to the idea that the more reliable sampling of actual crime is that obtained as early in the process as possible. (1)

The value of official documents relating to crime and the courts may be questioned on much more fundamental grounds. Whether or not indictments or convictions provide a more acceptable basis for statistical analysis apart, the question remains: can reported and recorded crime be regarded as a valid indicator of the actual level of crime in a particular area at a given period? The basis of eighteenth and early nineteenth century law enforcement was essentially amateur. The majority of magistrates in the county and the town were unpaid. Constables usually served by compulsion in much the same way as churchwardens, overseers of the poor and the surveyors of highways. The duties of the magistrates stretched far beyond the relatively narrow field of criminal detection and prosecution. A justice of the peace had wide powers of supervision over the activities of parish officers in the relief of the poor and the maintenance of the highways. Quarter Sessions looked to the individual justice, as well as the parish constables, for the presentment 'on his own view' of parishes and parish officers for defaults in fulfilling their legal obligations. In addition prices and wages, marketing practices and weights and measures all fell within the sphere of duty of the justice. Constables similarly had duties that went far beyond bringing felons to justice. The high constables of the hundreds and the petty constables of the townships and the parishes

1. J.M. BEATTIE "THE PATTERN OF CRIME IN ENGLAND - 1660 - 1800" PAST AND PRESENT No.62 FEB.1974. p 54.

were under obligation to report to the justices in Quarter Sessions, by way of 'presentment', offences not usually prosecuted by private individuals. Few people were likely to go through the trouble and expense of prosecuting all those misdemeanours which fell under the heading of 'public nuisance' yet this, together with such duties as executing warrants, drawing up jury lists, and perhaps more onerously, effecting the collection of rates, fell upon the shoulders of the unpaid constables. Thus the time, energy, and indeed, the inclination of these unpaid officers of the county to pursue their responsibilities in relation to the implementation of criminal justice, must be seen in the context of their more general role as administrative bureaucrats. Under such circumstances there would appear to be substantial justification for John Brewer's contention that:-

Passivity was built into the system. There was almost no attempt at criminal detection, except in an emergency. Crime was brought to the courts; officials did not go in pursuit of crime. Almost all prosecutions were brought privately. (1)

The relatively 'passive' system of law enforcement that characterizes this period was no doubt rendered even less effective in bringing offenders to the courts because of the time, trouble and expense involved in bringing a prosecution to a successful conclusion. It seems reasonable to suppose that such a situation must widen the gulf between 'real' and 'reported' or prosecuted crime. There was no real system of public prosecution and there was no official, other perhaps than the occasional active magistrate or constable, to encourage prosecution.

1. JOHN BREWER. 'AN UNGOVERNABLE PEOPLE? LAW AND DISORDER IN STUART AND HANOVERIAN ENGLAND'.

HISTORY TODAY VOL. 30 JAN 1980 p 23.

The private nature of the system of prosecution, by putting the burden of redress upon the victims of criminal activity, may well have served to eliminate the bias that 'official' involvement in criminal actions could have engendered. However, such a system, based as it was on the propensity of the individual to prosecute, cannot have encouraged prosecutions on a uniformly regular basis.

The fallibility of drawing conclusions about the nature and extent of criminal activity in a particular area at a particular time, from official records of the kind described, is readily apparent on the basis of these observations alone. A further problem, the scope and nature of which defies analysis, is presented by the undoubted operation of an 'infra-judicial' system of justice, which ran parallel to the 'official', court administered system. How far the 'official' system of justice was superimposed on an informal network of non-official and quasi-official arbitration, and the extent to which the 'infra-judicial' system of justice had survived the development of 'official' justice by the beginning of the nineteenth century, is a daunting problem. It has been argued that in Western Europe the 'official' system of justice was superimposed on an already well established and highly accessible traditional system of informal settlement, and that it was only in exceptional or unusual circumstances that cases were referred to the courts.<sup>(1)</sup> If this contention applies to the English judicial system then the figures gleaned from criminal records must be extremely unrepresentative and unreliable as a guide to both the nature and extent of crime.

1. J. M. BEATTIE CITING ALFRED SOMAN IN 'JUDICIAL RECORDS AND THE MEASUREMENT OF CRIME IN EIGHTEENTH CENTURY ENGLAND'. IN CRIME AND CRIMINAL JUSTICE IN EUROPE AND CANADA

EDT L.A. KNAFLA WATERLOO, ONTARIO (1981)

Thus it would appear that studies of eighteenth and nineteenth century criminality which are based upon the 'official' and 'quasi-official' records of the court of Quarter Sessions can at best give only a vague and indeterminate picture of the pattern of crime. On the other hand the undoubted weakness of such records and the limitations which they place on studies of this nature should not be over-stated. There are strong grounds for assuming a greater degree of credibility than the limitations defined would tend to suggest.

With regard to the use of Gaol Calendars it may well be the case that these provide no less valid an indication of the pattern of crime in Sussex during the late eighteenth and early nineteenth centuries than the Indictment Books. Though it was the general practice for the clerk of the peace to record only cases traversed in the Quarter Session Order Books it seems that the majority of cases listed in the Indictment Books were presented in the Order Books. Far fewer, it appears, pleaded 'guilty' to an alleged offence than 'not-guilty', a point to an extent substantiated by J.H. Baker who notes that:

... The court was supposed to ensure that a prisoner did not plead guilty from fear or ignorance, and in cases of doubt to persuade him to plead not guilty ... (1)

Entries for the last seven years of the Indictment Books, from 1783 - 1789, show a substantial increase over the period 1775 - 1782, an increase which is firmly reflected in the figures for cases presented

1. J.H. BAKER 'CRIMINAL COURTS AND PROCEDURE AT COMMON LAW 1550 - 1800' in J.S. COCKBURN (edt)  
CRIME IN ENGLAND 1550 - 1800 Methuen (1977)



at Quarter Sessions. During the eight years from 1775 - 1782, 209 indictments were listed. The period from 1783 - 1789 saw this number increase to 390. Taking this seven year period 68.71% of cases listed in the Indictment Books are also noted in one section or another of the Quarter Session Order Books. The percentage figure of cases noted in the indictments and also appearing in the Order Books does vary from year to year, from 57.69% in 1786 to a surprisingly high 87.5% for the preceding year. Obviously such a situation is by no means ideal, nevertheless it is the case that the majority of entries presented in the Indictment Books for the period 1783 - 1789 were recorded in the Gaol Calendars or in the notes on cases traversed in the Order Books. The question may be transposed. Are the Indictment Books as reliable as the Quarter Session Order Books in recording the total number of cases brought before the bench? With regard to the more serious cases the answer is yes. In fact, Indictment Books usually contain only the names of those accused of grand and petty larceny, assault, serious nuisances and other more serious offences. They do not however list those brought before the justices for vagrancy, bastardy, deserting dependants and minor misdemeanours. Thus, though indictment books do provide a more comprehensive list of 'higher' offences, they ignore completely a wide variety of commonplace offences which are recorded in the Order Books. During the period 1783 - 1789 a total of 535 cases were listed in the Quarter Session Order Books. Of this number only 268, slightly more than 50%, appear in the Indictment Books. Thus it seems clear that an analysis of convictions derived from Quarter Session Order Books and Session Rolls would provide no less valid an indication of the nature of crimes and offences brought before the court of Quarter Sessions, and may even provide a more complete guide to the criminal work of the justices in Quarter Sessions. The

Quarter Session Gaol Calendars also contain a note of those offenders acquitted and discharged by the justices for offences such as larceny and assault, though it was the invariable practice of the Court to record only convictions in the case of minor misdemeanours. Thus the Gaol Calendars are by no means dissimilar to Indictments in the kind of evidence that they yield with regard to certain categories of crime. It is also worth noting that the Indictment Books do not record the names of those subjected to the decisions of justices out of sessions whereas these are recorded, though without the consistency of the usual court cases, in the Quarter Session Order Books.

It may also be the case that the Indictments generally represent a more volatile source of information on eighteenth and nineteenth century criminality than the lists of convictions for various offences drawn up from the Order Books. Convictions represent the final result of a rigorous process of judicial selection that must lend to them a degree of authenticity lacking in indictments. Indictments, or 'written accusations', were drawn up at the very beginning of the judicial process. Of course we have no way of knowing the extent to which factors such as dearth and distress, the character of an offender, the circumstances of the crime, or attitude of those engaged in the judicial process towards particular kinds of criminal activities, influenced the final decision of the courts.

J.M. Beattie writes:-

... one can infer from the pattern of verdicts over the period (1736 - 1753) that the grand jurors saw in the administration of justice a flexible weapon for the protection of property and that they were as much influenced by the character of the criminal and the circumstances of the times as by the

evidence laid before them. As circumstances warranted they were willing to relax or anxious to stiffen the application of the law. (1)

Nevertheless, it seems unlikely that the variables affecting the decisions of the court were any less important than the variables which motivated or deterred an individual when the decision to prosecute was made. Indeed, Douglas Hay has argued that it was in the great emphasis placed on the technically correct application of the law that the courts found part of their strength.

He argues:-

When the ruling class acquitted men on technicalities they helped instil a belief in the disembodied justice of the law in the minds of all who watched. In short, its very inefficiency, its absurd formalism, was part of its strength as ideology. (2)

The humanitarian considerations which may have operated in the higher courts, where a minor theft could bring down the death sentence upon an offender, were unlikely to have operated to the same degree in Quarter Sessions where the punishment imposed upon an offender was more likely to be a fine or a short term of confinement than anything else. In addition, the very punctiliousness of the court may well have eliminated unfounded, malicious or spurious accusations to a degree which make convictions, rather.

1. J. M. BEATTIE op cit ibid.

2. DOUGLAS HAY 'PROPERTY, AUTHORITY AND THE CRIMINAL LAW'. IN HAY ET AL ALBION'S FATAL TREE CRIME AND SOCIETY IN EIGHTEENTH CENTURY ENGLAND. PENGUIN 1977 p 33.

than indictments, the most valid indicator of 'actual' crime. Indeed, the Chairman of the Western Division of the County, the Duke of Richmond, found at least one Grand Jury indictment questionable. In reporting the case of Thomas Young, brought before the justices sitting at Petworth in October 1793, the Sussex Weekly Advertiser noted that 'the man's innocence appeared so glaring in his trial that the noble Chairman, the Duke of Richmond, expressed his astonishment at the Grand Jury finding a bill against him'. (1)

The problem of assessing the validity of the entire body of court records in relation to 'actual' crime is perhaps more difficult. However, there are grounds for being slightly more optimistic with regard to Quarter Sessions records than Assize Court Records. It was certainly the case that many victims of crime, particularly from the labouring class, could not afford the expense of prosecution or were unwilling to suffer the loss of time and the trouble that prosecution incurred. Even after legislation was introduced to facilitate prosecution in the latter half of the eighteenth century, (2) the problem of the financial disincentive to prosecute was not significantly reduced until 1826. (3) However, the Quarter Session Order Books are full of minor cases of larceny - the theft of boots, tools, items of clothing, handkerchiefs and foodstuffs. Presumably such items had a real value to the victims of the theft and they thought prosecution worthwhile. Whilst the Assize Court may have been remote, intimidating and inaccessible, Quarter Sessions, with its four quarterly meetings, repeated in each division of the county, and

1. Sussex Weekly Advertiser 13th October 1793

2. 25 GEO II C36 (1751) : 27 GEO II C3 (1754) :  
18 GEO III C 19 (1778) : 38 GEO III C52 (1798) :  
41 GEO III C78 (1801) : 58 GEO III C70.

3. 7 GEO IV C64.

extended on innumerable occasions by frequent adjournments, was in all probability much more 'open' and accessible to the lower orders of society. This is not to say that the monopoly of the landed gentry was any less extensive here, indeed it was in Quarter Sessions that the collective authority of the gentry was most widely exercised, but it seems reasonable to suppose that Quarter Sessions did not present the daunting and awe inspiring prospect that was such an integral feature of the Assizes. It is also hard to believe considering the nature of the cases that appear in the records of the Court, that it was only the unusual or special cases that came before the justices. Undoubtedly the infra-judicial system of justice, in whatever form this operated, was as widespread in Sussex as anywhere, but it seems unlikely that this was so extensive as to replace or seriously undermine the practice of seeking redress for grievances at Quarter Sessions.

To conclude, the limitations of judicial records in the investigation of criminality in the eighteenth and nineteenth centuries, are significant enough to make conclusions at best tentative and cautious. Nevertheless, session related records, and in particular the entries in the Gaol Calendars, both pre and post trial, and the Quarter Session Order Books, provide as valid an indicator to the variety and nature of crime as any other single source of evidence. Further, Quarter Sessions were not so remote and inaccessible as to discourage all but the most determined of prosecutors, indeed they provided a channel through which men of very modest means could, and frequently did, seek redress.

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## CHAPTER 1.

### THE SUSSEX COURT OF QUARTER SESSIONS.

This investigation seeks to examine the role of the justice of the peace in its judicial context. Since the authority of the justice of the peace was exercised at its highest level, both judicially and administratively, within the Court of Quarter Sessions, it is this cardinal local institution that provides the basis for this study. It should, however, be clearly understood that the judicial work of the justices of the peace was, if anything, subordinate to their function as the key administrative officers of the County, at least in terms of the time and energy spent collectively by justices at Quarter Sessions. The justice of the peace was without doubt the mainstay of the eighteenth and early nineteenth century administrative system, a point made by Esther Moir:-

For most people during a great part of this country's history the reality of government lay, not in a distant Parliament of a central government based at Westminster, but in the familiar figure of the justice of the peace. (1)

The essence of the Court of Quarter Sessions' role lay in its capacity as a supervisory body, presiding as it did over the affairs of the parishes and intervening in, and arbitrating on, the various administrative matters that fell within its authority. The subordinate authorities, such as the parish, had a legal obligation to administer the services for which they were, in law, responsible, and they could be presented at Quarter Sessions for neglecting to fulfil these obligations. Although the mere act of presentment was little more than the formal 'passing on' of information about a particular neglect or

1. Esther Moir. Local Government in Gloucestershire 1775 - 1800. British and Gloucestershire Archaeological Society Vol 7.

dereliction of duty to the justices assembled in Quarter Sessions, a presentment could form the basis of an indictment if remedial action was not effected, and the result could mean a fine for the negligent parish. A presentment by the Grand Jury of the County was in itself however a valid indictment. The justices in Quarter Sessions were provided with several methods of facilitating this process. A presentment could be made via the relatively cumbrous Grand Jury or, perhaps more efficiently, by the constables of the parishes, or by the justices of the peace themselves.

Apart from this supervisory function, the Court of Quarter Sessions had itself certain administrative responsibilities and obligations which covered such diverse areas as the maintenance of the County's bridges, the appointment of various county and parish officials, the assessment of rates, the hearing of appeals against the administrative orders of the justices acting out of sessions - more often than not against removal orders, the conveying and welfare of prisoners, the care of pauper and criminal lunatics and, especially during the last two decades of the eighteenth century, the maintenance and the administration of the County gaols and houses of correction.

More important than the scope of the administrative duties with which the Court was expected to deal, is the fact that these responsibilities were not static and formalized to a degree which allowed the justices of the peace to preside over the affairs of the County in a routine and unresponsive fashion. The demands made upon Quarter Sessions, during the course of the eighteenth century, were becoming more complex, extensive and time-consuming. Appeals against the decisions of the justices acting out of sessions, as individual justices of the peace or in Petty Sessions, which covered the whole range of misdemeanours and nuisances in addition to bastardy, apprenticeship

and settlement and removal appeals, absorbed a tremendous amount of time and energy by the end of the century. The maintenance of the County gaols had once been the exclusive preserve of the high sheriff of the County, but this institution had been brought under the direct control of the justices in Quarter Sessions by the end of the century, and became as much a part of the justices responsibility as the houses of correction. In addition, the penal reforms instituted within the County during the 1780's placed added financial, administrative and supervisory burdens upon the justices in Quarter Sessions.

County bridges constituted yet another area of county administration which had evolved, by the beginning of the nineteenth century, into a complex and involved area of management and surveillance. The maintenance of certain county bridges had been an important feature of the work of the justices in Quarter Sessions since the statute of 1530 (1) made the court liable for the repair of bridges where no one else could be made responsible. However subsequent statutes, and particularly that of 1812 (2), placed the burden of presentment of bridges in disrepair more or less upon the shoulders of the justices of the peace themselves - a development which was reflected in the appointment of supervisory justices responsible for, and able to authorise the repair of, bridges for the Western Division of the County in the same year, and which ultimately led to a process of 'direct' administration for both the Western and the Eastern Divisions following a Quarter Sessions order that:-

... at any time hereafter, where it shall come to the knowledge of the constables ... that any of the said bridges stand in need of repair, the said constables

1. 22 Hen VIII c5.

2. 52 Geo III c110.



should immediately apply to such magistrates hereunder named as are appointed to superintend the repairs of such bridges for their directions therein, previous to repairing the same. (1)

Upon such an appeal justices were authorised to allow expenditure up to a fixed sum, initially £20, without recourse to Quarter Sessions.

The growing number of vagrants passing through the court, particularly during the first decade of the nineteenth century, led Quarter Sessions into an elaborate organisation for the conveying of vagrants from place to place. The work of the justices 'out of sessions' also encompassed dealing with vagrants, and the appeals against the removal orders by parish officials against the orders of the individual justice, seeking to avoid the acquisition of large numbers of such financially debilitating members of the community, placed an added burden upon the Court of Quarter Sessions.

The care of pauper and criminal lunatics was another service for which the justices in Quarter Sessions became responsible, though again it seems, this was a service much less willingly adopted by the justices than imposed upon them through legislative measures. An Act of 1774 (2) provided for the licensing and inspection of private lunatic asylums by visiting justices appointed by the Court. In 1808 (3) counties were empowered to build county lunatic asylums for pauper lunatics, though perhaps because of heavy expenditure on county gaols and houses of correction in the last two decades of the eighteenth

1. E. S. R. O. QO/EW 45 Lewes Easter 1823.
2. 14 Geo III c49.
3. 48 Geo III c96.

century the Sussex justices made no such provision. The Act of 1853 (1) compelled unwilling counties like Sussex to assume responsibility for lunatics by making the provision of county asylums compulsory.

To this comprehensive and extensive range of additional administrative duties must be added the great burden or work that arose out of the French Revolutionary and Napoleonic Wars, and which included both the raising of a County quota for the services, and the complex fiscal arrangements for the relief of militia-men's families. The close connection between the Lieutenancy and the Court of Quarter Sessions was at its most marked during the French Wars. The Lord Lieutenant of the County was by custom appointed to the position of Custos Rotulorum in the Commission of the Peace, and under certain circumstances justices had the power to act as Deputy Lieutenants. The administrative duties which arose out of such enactments as the Quota Acts of 1795 and 1796 (2), by which the Sussex justices were required to raise respectively 172 and 223 men for the Navy, in addition to supervising the creation of new forces under various Acts (3), must have placed considerable burdens on the magistracy, since it was the justices in Quarter Sessions at County level, and the Overseers of the poor and churchwardens at parish level, who were expected to administer such enactments. This quite apart from the increasingly

1. 16/17 Vict c97.

2. 35 GEO II cc 5 & 19; 37 GEO III cc 4 & 24.

3. EG The Supplementary Militia Act (37 GEO III, cc 3 & 22) Levy in Masse Act (43 GEO III c96) The Training Act (46 GEO III c90) and the Local Militia Acts (48 GEO III c111; 52 GEO III c38).

complex fiscal arrangements, conducted again under the auspices of the Court of Quarter Sessions, arising out of legislation dealing with the relief of militiamen's families, as well as the implementation of a system of fines which fell upon parishes failing to fulfil their quota.<sup>(1)</sup>

The list of administrative duties that fell upon the justices is seemingly endless, and if recounted in detail would provide much more than a general introduction to this investigation. Nevertheless, one more area of county administration, which perhaps illustrates more than any other the evolutionary nature of Quarter Sessions work, particularly during the late eighteenth and early nineteenth centuries, is worth mentioning. The demands made by central government on the justices in Quarter Sessions adds an increasingly important dimension to the role of the magistracy in the administrative process. As social and economic problems grew more complex, or at least became the subject of attention and legislation, central government found itself in need of more detailed information about contemporary developments. As a result Parliament began to demand from the justices in Quarter Sessions accurate statistical returns on a wide variety of topics. In 1777 justices were, for example, required to send up information about the state of the poor; in 1776, 1785 and 1803 the figures for poor law expenditure were requested; in 1795 lists of the names and places of meeting of the various Friendly Societies were sent, and in 1801 came the first census. The work connected with the payment of 'bounties' to hemp and flax growers was an additional, and, it would appear, very time consuming

1. Provisions for Relief for Sussex Consolidated under 43 GEO III c47.

administrative task imposed by the government on Quarter Sessions. In 1767 Parliament voted £15,000 derived from a duty on foreign linens, to be used to encourage the growth and preparation of flax and hemp within the country. By an Act of 1781 (1) Quarter Sessions was authorised and required to check claims to these bounties. The court sent lists to the Commissioners of Trades and Plantations, after such claims had been considered by the justices in sessions. The Court later distributed the monies released by the Receiver of Land Tax for the County.

The significance of the Court of Quarter Session's unique position, as both an administrative body with wide discretionary powers and as a judicial tribunal for the hearing of lesser offences, has been fully explored elsewhere. (2) Suffice it to say that what amounted to discretionary legislative powers had long been invested in the Court of Quarter Sessions, and that this authority was greatly extended by various sixteenth and seventeenth century statutes. (3) A wide field of legislative activity was open to justices under their general instructions to 'keep and cause to be kept the King's peace'. The justices in Quarter Sessions also had the power to declare certain acts a 'public or common nuisance'. Needless to say, a body able to pass 'General Orders' on a wide variety of local affairs, from the care of the poor to the regulation of public houses and local fairs, and at the same time able to adjudicate on breaches of these regulations or 'General Orders' without being under an obligation to submit its decisions to a higher authority, was really quite formidable. Such an

1. 21 GEO III c58.

2. Sidney and Beatrice Webb ENGLISH LOCAL GOVERNMENT THE PARISH AND THE COUNTY (2nd EDT) LONGMANS 1924 CH 4 and CH 5.

3. Ester Moir The Justice of the Peace. Penguin 1969 pp 26-53

unprecedented position of authority must have been, as the Webbs point out, legally very questionable:-

... we think that even the eighteenth century law courts must have held their orders, if they had been challenged, to have been either extra-legal - that is not legally enforceable on anyone who chose to disobey them - or else positively illegal - that is in direct contradiction of existing statutes. (1)

Nevertheless, such a wide measure of discretion left the justices in Quarter Sessions:-

... free to perform their own functions in their own way. Therefore they could both make and vary rules as to methods of performing their functions as and when they saw fit to do so. (2)

The justices in Quarter Sessions however, were not, at least in theory, entirely free from the supervision of a higher authority. In the same way that the court exercised a supervisory function over the parish vestries and parish officials so the Assize Courts were charged with the duty of supervising, and where necessary directing the decisions and actions of the bench. In theory the Lord Lieutenant, the High Sheriff and the justices themselves were subject to the direction both of the judges in Assize and the Privy Council where the law was ambiguous. Also, all important administrative decisions made by the justices in Quarter Sessions were, again in theory, subject to the approval of the Assize Court judge. In practice it seems, both the

1. S and B Webb op cit p 34.

2. Holdsworth in E.G. Dowdell A Hundred Years of Quarter Sessions. C.U.P 1932 p 55.

judicial and administrative work of the justices proceeded unhampered by constant revision and alteration by the higher court, and there is little evidence of any systematic intervention in local government. Under common law the justices were obliged to act within certain limits. Except in cases where it had been explicitly removed, there was the all important right of appeal from their action to the higher courts. Orders of the justices both in and out of sessions and in both judicial and administrative matters, could be challenged and quashed. This exposed the magistracy to the constant danger of being involved in expensive legal proceedings. (1) However, in general it appears that the Lord Mansfield's dictum of 1780 that '... no justice of the peace ought to suffer for ignorance when the heart is right'. (2) was followed and that the discretionary powers of the justices, providing these powers were exercised in good faith, could be employed without fear of rebuke or penalty.

Thus, though the Assize Court judges were charged to direct and advise the bench in cases of difficulty or importance, and though they were charged during their circuits to 'enquire into the manner in which justices performed their duties', there is no evidence in the Order Books or the Session Rolls of an overt policy of revision or ratification by a higher authority. However, there is evidence that the Assize Court provided a vital channel of communication between central government and the Court of Quarter Sessions, and it was often through the mediation of the Assize Court judge that central policy was communicated to the counties at large. Proclamations were frequently issued urging the enforcement of the laws against particular offences and the

1. Dowdell op cit pp 14-15.

2. Quoted in Esther Moir. Local Government in Gloucestershire 1775 - 1800. Brit & Glous Arch Society Vol 7, p 139.

order of 1787, recorded for both the Eastern and Western Divisions of the County, following on from the Summer Assize, was by no means unusual:-

Whereas his Majesty has been graciously pleased to express his paternal care of his people ... for the prosecuting and punishing of vice and profanities ... we his Majesty's justices, do in obedience resolve that we will enforce in the strictest manner the laws against all persons who shall be guilty of blasphemy, profane swearing or cursing, excessive drinking, lewdness, frequenting public gaming houses ... or any immoral or disorderly practices, and against all officers who, contrary to this duty, shall be remiss or negligent in putting the laws into execution ... (1).

Whether or not such pronouncements, based upon the proclamations issued by the Assize Court judges, resulted in any real change in the policy of the bench towards particular offenders, is difficult to establish without the well documented petty session, or even 'brewster session' records that would be necessary to establish their impact, given that this kind of declaration was levied more at these subordinate authorities. In Quarter Sessions itself misdemeanours such as drunkenness or profane swearing were likely to come under the heading of 'common nuisance' and it is the case that eight convictions were recorded for the session following the 1787 summer Assize. However, the year following showed no such convictions in Quarter Sessions and this pattern is repeated for the next two years. One may conclude that the Court of Quarter Sessions had either been effective in making public

1. E.S.R.O. QO/EW/28 Lewes 12th January 1787.

its intention to prosecute such offenders should the opportunity arise, which was undoubtedly part of the reason for making such pronouncements, and that this provided an effective deterrent, or, that justices out of sessions were bringing up such offenders. However, it seems likely that such proclamations had little more than a temporary effect on county policy, given the varied and arduous tasks that were already being assigned by central government to the justices in Quarter Sessions, and that declarations of this nature, which related to the 'morals' of the community at large, were rather more for the melioration of the populace than a serious statement of intent to prosecute all such offenders. Thus the proclamations issued to the bench by the Assize Court judge were effective only if the bench chose to act on them, and they by no means impinged upon the autonomy of the Court of Quarter Sessions, a point made by Dowdell in his study of the Middlesex bench when he notes that 'Proclamations were extensively employed to recommend the general enforcement of particular laws, but these were weak instruments unless addressed to willing ears'. (1)

Nevertheless, it is evident that the Assize Court was more than just a tribunal for the referral of more difficult criminal cases, whether or not the proclamations it issued formed the basis of subsequent County policy. Indeed, it would appear that the authority of the Assize Court carried great weight amongst the justices serving on the bench. In a dispute that arose between the justices of the Eastern and Western Divisions of the County with regard to the salary paid to the keeper of the County Gaol, it was pointed out by the Eastern Bench:-

That the said salaries constitute a part of the  
rules for the better government of the said

1. Dowdell op cit p 14



gaol and have been received by the justice of Assize, Lord Mansfield, as directed by the 32 Geo II Chap 28 sec 6, and has been approved by him although he has not yet signed the said Rules and Orders ...

The Letter continues:-

... under the authority of the justices in Assize these salaries are warrantable and strictly legal ... The good effects of them have fully appeared to the judges of Assize and to every person who has inspected the gaol. (1)

Esther Moir also finds that the relationship between the Assize Court and the Court of Quarter Sessions in Gloucestershire was a very close one, and that the Assize Court was used to disseminate government policy to the County at large through the mediation of the Court of Quarter Sessions. (2)

In addition to its function as an administrative institution the Court of Quarter Sessions also heard a wide variety of non-capital offences, from minor misdemeanours to grand and petty larceny. The actual dividing line between the jurisdiction of the county bench of magistrates and the judge in Assize is a difficult one to establish, given that this was very much the result of local custom or tradition. The jurisdiction of the justices in Quarter Sessions certainly varies from county to county, and may well vary from period to period. Thus the absence of a particular kind of offence in the records of the Court of Quarter Sessions need not necessarily mean that such crimes were not being

1. E.S.R.O. QR/EW 605.

2. Esther Moir op cit p 146

committed within the county, merely that these offenders, for one reason or another, were not being brought before the justices. Of course, the process might just as easily work per contra, and the absence of a lesser offence at the Assize Court may well be the result of a downward dissemination of judicial business. An Act of 1842 (1) sought to clarify this ambiguous and inconsistent state of affairs by providing clear guidelines as to the limitations of the jurisdiction of the justices in Quarter Sessions. By this Act justices could not hear cases of murder, treason, capital felony, felony for which a first offender could be transported for life, perjury, forgery and a number of lesser offences including bigamy, blasphemy, libel and bribery. However, for the period investigated, at least in theory, under various statutes and by the terms of the Commission of the Peace, justices were authorised to hear cases of trespass and felony, but not treason. By the terms of the Commission in all cases of difficulty a judge of one of the benches of Assize had to be present.

The justices of Sussex, throughout the period investigated, heard virtually all non-capital offences. In addition to the usual misdemeanours the justices heard cases of grand larceny, frequently reserved in other counties for the Assize Courts, petty larceny, assault, trespass and even forgery and receiving. However, despite the relatively wide jurisdiction of the Sussex bench, certain cases were, after an initial presentation before the Court of Quarter Sessions, referred to the Assize Court. During the period 1775 - 1790 twelve such instances occurred. The period from 1795 - 1805 saw a further five cases given over to the Assize Court. The practice of transferring cases in this way did not increase during the period 1810 - 1820, despite a substantial growth

1. 5 and 6 Vic c 38.

in the numbers of more serious offenders passing through the court. During the second decade of the nineteenth century only four cases were passed from the justices in Quarter Sessions to the judge in Assize. At the same time, as one might expect, the figures for more serious punishments, such as transportation and longer gaol sentences, show a corresponding increase. (1) Generally, offenders who were transferred from the Court of Quarter Sessions to the Assize Court after an initial appearance before the justices were those concerned with the more usual Assize Court offence of sheep stealing, although occasionally such individuals are merely described as having committed a 'felony'.

The Sussex Assizes were usually held at East Grinstead, although both Lewes and Horsham occasionally hosted Assize Court gatherings. The Sussex Assizes generally heard capital offences and the more serious or unusual criminal acts.

Of the 432 indictments presented to the Assize Courts during the periods 1787 - 1790, 1797 - 1800 and 1817 - 1820 burglary and house-breaking, highway robbery and the theft of horses, sheep and other livestock account for 243 or 56.24% of the total. Theft from storehouses, warehouses and mills account for a further 10% of Assize Court indictments whilst more serious crimes against the person, which included rape, infanticide, murder and serious wounding comprise a further 8%. Indictments for simple larceny also become progressively more frequent during the period investigated and ultimately account for 10.64% of the total number of Assize Court indictments. Although this development does not show a change in the nature of the jurisdiction of the Assizes since the court heard the occasional grand larceny case throughout the period investigated, it does suggest that there was an increasing over-

1. See appendix 3.

lap between the work of the judges of Assize and the justices in Quarter Sessions in Sussex, particularly during the second decade of the nineteenth century when grand larceny began to dominate the list of offences presented at Quarter Sessions.

Although the Sussex Court of Quarter Sessions frequently heard grand and petty larceny offences it is clear from the cases noted that the bench was essentially a tribunal for the hearing of misdemeanours such as assault, vagrancy, the deserting of dependants and 'nuisances', at least until the years immediately following the end of the Napoleonic Wars. Nevertheless, it would appear that the Sussex justices did accept a much wider jurisdiction than the neighbouring County of Kent. Elizabeth Melling has noted that during the whole of the eighteenth century, and for the first two decades of the nineteenth century, the judicial work of the Kent bench was taken up entirely with the hearing of misdemeanours and petty larceny only, though this could occasionally include obvious 'grand larcenies' reduced to petty larceny by a deliberate undervaluation of the stolen goods. (1) The Sussex bench, if it ever observed this formality, had long since dispensed with it. It was only during the 1820s that the justices of the Kent Court of Quarter Sessions began to hear grand larceny cases which were classified as such. The Criminal Justice Act of 1827 (2) abolished altogether the traditional distinction between grand and petty larceny, fixed at 12d, and endorsed the right of all justices to try cases of 'simple' larceny - generally interpreted as the theft of goods to the value of 40/-. Thus the Act approved, rather than created, a wider jurisdiction for some benches. As far as Sussex was concerned the justices had long since heard substantial grand larceny cases along with petty larceny offences on a fairly regular basis, and the Act can have

1. Elizabeth Melling KENTISH SOURCES VI CRIME AND PUNISHMENT MAIDSTONE (KENT COUNTY COUNCIL) 1969

pp 1 - 21

2. 7 Geo IV c 64.

had little real impact here.

In addition to the difficulty of defining the relationship between the justices in Quarter Sessions and the Assize Courts, a similar problem arises at the other end of the judicial spectrum. Justices of the Peace held quite considerable powers outside of the Court of Quarter Sessions and judicial business could be delegated downwards as well as upwards. By the end of the eighteenth century the holding of Petty Sessions meetings, by two or more individual justices of the peace, was a well established feature of local judicial and administrative organisation. These Petty Session meetings of the justices largely replaced the 'special sessions' held by the high constables of Hundreds during the seventeenth and early eighteenth centuries, and were sometimes established on the initiative of an individual magistrate, and sometimes at the express request of the Court of Quarter Sessions. Petty Session meetings of justices were ideally suited to the more detailed and less crucial aspects of county administration and it was to such sessions that the Government turned in the 1820's to provide a more 'direct' and speedy system for the transacting of local administrative and judicial business. (1) Though the Petty Sessions did play a part in the judicial system particularly in dealing with such offences as bastardy, which virtually disappears from the records of the Court of Quarter Sessions in the second decade of the nineteenth century, and the breaching of laws relating to the licensing of ale-houses, such meetings were primarily for the conducting of administrative business which required the concurrence of two justices, or more legal knowledge than the single justice had at his command.

Of more crucial importance to the judicial business of the justices in Quarter Sessions was the extent to which the justices acting out of

1. S and B Webb op cit pp 400 - 411.

sessions used their considerable powers of summary jurisdiction.

The powers of the justices of the peace outside the formal meetings of the Court of Quarter Sessions were really quite substantial and comprehensive. Under a variety of statutes, from the sixteenth century onwards, the criminal jurisdiction of the justices had steadily increased until, by the beginning of the nineteenth century, they were empowered to hear virtually the entire range of minor misdemeanours, from the utterance of a 'profane oath' to a statutory nuisance (1), in addition to the more serious offences of incorrigible vagabondage (2), rick burning (3), and particularly relevant to the first two decades of the nineteenth century, offences against the game laws.(4) For these and similar offences a single justice, sitting entirely on his own, could impose sentences of corporal punishment or imprisonment.

It would be wrong to suggest that such powers were exercised without any safeguards whatsoever. If an individual was wealthy enough he could have his case removed to the Court of King's Bench at Westminster by writ of certiorari, though in most cases sureties of £ 50 had to be provided and this, consequently, removed such a procedure from the range of possibilities that would have confronted the average labourer. Alternatively, appeals against the judgements of the justices out of sessions evidences the fact that individuals could, in theory, bring their case before the justices in Quarter Sessions, though this seldom appears to happen in criminal cases. By the second decade of the nineteenth century the work of the justices out of sessions, if the number of

1. 22 Hen VIII c 12, 39 Eliz I c 4, 17 Geo II c 5, 27 Geo III c 11, 32 Geo III c 45.
2. I James I c 27, 7 James I c II.
3. 22 and 23 Chas II c 7.
4. 19 Geo II c 21.

convictions 'filed' at Quarter Sessions can be taken at face value, provided a significant adjunct to the criminal work of the Court of Quarter Sessions. For the period 1811 - 1820, 32% of offences successfully prosecuted before the justices were the result of convictions from magistrates acting outside of the Court of Quarter Sessions, which represents in numerical terms 523 cases out of a total of 1630.

Individual justices could also serve to relieve the Court of Quarter Sessions of a vast amount of administrative business, and judging from the appeals to Quarter Sessions from subordinate authorities they appear to have undertaken such diverse tasks as the supervision of parish poor-relief, the maintenance of highways, the appointment of local officials and the assessment of rates. Parliament positively encouraged the transfer of administrative work from the quarterly meetings of Quarter Sessions to the more regular, and possibly less bureaucratic, stewardship of the individual justice of the peace. Such county business as the diversion or closing of public footpaths, which was occasionally a matter of acute public concern and, more importantly, the inspection of weights and measures (1), were specifically entrusted to the single justice by successive acts. Quarter Sessions itself was not averse to using the expedient of the justice out of sessions, as developments in County bridge administration show.

Thus, the significance of the Court of Quarter Sessions, both as an administrative body meeting to perform the various tasks assigned to it, and as a judicial body, convened for the hearing of a wide variety of criminal offences, was undoubtedly very great. Yet the dignity and prestige of such a body, if not its efficiency, must have suffered to a degree, both from the lack of enthusiasm many justices appear to have held for the quarterly meetings of the court, and because of the

1. 53 Geo III c 68. 37 Geo III c 143.

fact that in Sussex, by the end of the eighteenth century, we have two almost entirely separate Courts of Quarter Sessions, sitting for the Eastern and Western Divisions of the County.

During the period 1775 - 1790 the average level of attendance at the quarterly meetings of the court, with the exclusion of adjourned sessions which usually met for a specific purpose and with only those justices with a 'special' interest in the subject matter of the meeting, was 7 for the Easter Division of the County and 7.5 for the Western Division. Within these groups of justices there were, it appears, a committed core who may be described as 'active' justices and who regularly attended the Quarter Sessions meetings for their respective Divisions. Amongst the justices appearing at Quarter Sessions for the Eastern Division Sir Godfrey Webster and the Rt Hon Thomas Pelham appear on a fairly regular basis, whilst for the Western Division the Duke of Richmond, an active campaigner for the improvement of prison conditions, Sir George Thomas and Sir Henry Goring are to be found attending most meetings of the court. The five years from 1795 - 1799 are similarly characterized by fairly moderate attendance on the part of the justices, with an average of 8 for both the Eastern and the Western Divisions. However, despite a comparatively low rate of attendance at the meetings of the Court of Quarter Sessions for most of the period investigated, it should be noted that the average attendance figure for the immediate post - Napoleonic period shows a significant upturn. The five years from 1818 - 1822 particularly illustrate this with an average of 16.5 justices appearing for the Eastern Division and 17.3 for the Western Division.

The inordinate length of the County, some eighty miles from East to West, naturally lent itself to the creation of an Eastern and a Western administrative division. The creation of such Divisions in Sussex was



in effect merely an extended form of a process of disintegration which was already well established in most counties. By law every Court of Quarter Sessions meeting was summoned for the entire County; in practice the difficulties in travel made attendance at every Quarter Sessions meeting impossible for many of the officers whose presence was required by the court. The difficulties of travelling to a distant Quarter Sessions meeting are reflected in the presentment of 1686, initiated by the Grand Jury, concerning the joint meeting of the Eastern and the Western benches, which, the Grand Jury stated, caused:-

... no small grievance to the Constables,  
Headboroughs, Tithingmen and other  
inhabitants of the Western Rapes of the  
said County to attend at the general Quarter  
Sessions of the peace held at Lewes ...  
it being very remote from the place of  
habitation of most of the inhabitants of  
the said Western Rapes and very much  
to their trouble and damage. (1)

In most counties it was found to be much more expedient to hold the four quarterly meetings of the court in different parts of the county to give all the various officials and representatives the opportunity of attending at least one sessions meeting during the course of the year without too much difficulty. In Sussex this process was taken a stage further by the creation of what amounted to two separate Courts of Quarter Sessions, both acting as if they held a separate commission. The only link between the two benches was the all important clerk of the peace, and it was through this official that a measure of uniformity was achieved. This situation certainly dates back to the sixteenth century, since the idea of a joint

1. E. S. R. O. QO/EW 9 Chichester Easter 1686

midsummer sessions was first introduced in 1594. This joint session lasted until the Grand Jury presentment of 1686 put an end to the practice. Both the Eastern and the Western Divisions of Sussex consisted of three Rapes, Hastings, Pevensey and Lewes for the former and Arundel, Bramber and Chichester for the latter. When Sussex was officially divided into two entirely separate administrative counties in 1889 the division was made along the lines introduced by the justices in Quarter Sessions (1). In the Eastern Division virtually all Quarter Sessions meetings were held at Lewes, the County town, whilst in the Western Division the quarterly meetings were held at Midhurst, Chichester, Horsham and Petworth for most of the eighteenth century. After 1809 Midhurst as a venue for the meetings of the magistrates appears to have been dropped and the sessions alternated between the other three.

Thus the concept of a single, united Court of Quarter Sessions, well attended by justices from all over the County, meeting in the County town, and served by justices all of whom had a detailed knowledge of county business, does not apply in Sussex, despite the crucial role played by the Court of Quarter Sessions in both the judicial and the administrative systems. For the most part, attendance was small and irregular, and the division of the bench, together with the fact that in West Sussex the venue for Quarter Sessions meetings moved from place to place, meant that the only real channel of communication between the justices of the peace, and the only official able to ensure a measure of continuity, was the clerk of the peace. Further, the device of adjournment can in no way have contributed to the cohesion of the bench, especially when adjourned sessions began to multiply during the second decade of the nineteenth century. The extent to which

1. Ref Map THE ADMINISTRATIVE DIVISION OF SUSSEX

these adjourned sessions multiplied during the period investigated is shown by the fact that for the ten year period, from 1775 - 1785, only 33 adjourned session meetings were held while for the five year period from 1818 - 1822, 77 such sessions were held by the justices, in the main to conduct the criminal business of the court.

The justices of the peace were not unaware of the problems that such a disjointed system of local government might present, or of the fact that the creation of two separate courts led to a great deal of duplication at a time when the justices were undertaking an increasing amount of work. In 1818 the idea of a joint midsummer meeting for the magistrates of both Divisions of the County was reintroduced after a lapse of more than one hundred and thirty years, by the Earl of Chichester, who suggested:-

... it might be expedient once a year to convene a meeting of the magistrates acting within and for both Divisions to consider any topics that affect the general interest of the County and for securing a beneficial practice in all judicial orders and proceedings. (1)

In fact, joint meetings of the justices of both Divisions of the County had been held at various times throughout the eighteenth century when matters of mutual interest had arisen, such as the Cuckfield Sessions of November 1777, set up to consider various proposals for penal reform. (2) The significance of the Earl of Chichester's proposal, which was adopted in 1819 and which lasted until 1840, was that such meetings were to be held on a regular basis.

1. E. S. R. O. QO/EW 43 Chichester, Mich 1818.
2. E. S. R. O. QO/EW 25 Cuckfield Nov 1777.

## CHAPTER 2.

### LARCENY.

Grand larceny features amongst the more serious criminal offences that were brought before the Sussex Court of Quarter Sessions and this, together with petty larceny, represents a substantial element in the criminal work of the justices of the peace. During the period 1775 - 1820 both the volume and the proportion of larceny offences, heard by the justices in Quarter Sessions, increased significantly in relation to the number of other offences dealt with by the bench. For the sixteen years from 1775 - 1790 larceny convictions represented 21.60% of the total number of convictions. The period 1795 - 1799 saw the proportion of larceny convictions increase to 24.66% of the total, while the years 1800 - 1805 evidenced a slight decrease in the proportion of larceny convictions to other offences, the figure for these years being 22.65%. Thus, during the last quarter of the eighteenth century the level of grand and petty larceny convictions, in relation to the total volume of offences brought before the bench, remained fairly constant. During the second decade of the nineteenth century however, this consistent pattern of larceny convictions changes quite dramatically. The five years from 1810 - 1814 shows quite a significant increase in the proportion of larceny convictions to 29.69%. However, it was during the period 1815 - 1820 that the justices in Quarter Sessions faced the most substantial increase in the level of larceny convictions to other kinds of criminal activity when such offences accounted for 47.71% of the total number of convictions. The relative level of larceny convictions reached a peak in 1818 with a figure of 53.01% but the figures show a gradual decline over the next two years, to 51.79% in 1819 and 44.11% in 1820.

The increase in the proportion of larceny convictions to other offences

represents an increase in the volume of larceny coming before the justices, rather than a decrease in the volume of other offences. Indeed, apart from bastardy convictions, it appears that most other kinds of offence brought before the justices remained constant or, particularly in the case of assault and vagrancy, increased in volume over the same period. The increase in the number of larceny convictions is by no means regular and constant over the entire period investigated, but a strong feature of the figures drawn from the gaol calendars and Quarter Sessions Order Books is a quite substantial upturn during the period 1815 - 1820. The sixteen year period from 1775 - 1790 saw 135 convictions for larceny in Quarter Sessions. During the period 1791 - 1800 this figure increased to 157. The first decade of the nineteenth century again saw an increase in the number of larceny convictions. During the period 1801 - 1810 the figure reached 186. However, by far the most significant increase in Quarter Session larceny convictions occurred during the period 1811 - 1820. During this second decade of the nineteenth century 484 grand and petty larceny convictions were recorded from the cases brought before the justices in Quarter Sessions. More importantly, 386 of these cases were recorded for the period 1815 - 1820, a figure which exceeds the total number of larceny convictions for the twenty-six year period from 1775 - 1800. The highest annual number of larceny convictions were recorded for 1819 when the figure reached 101. Again, as the tables show (1), the increase in the number of larceny convictions is not constant, since, for example, only eight larceny convictions were recorded in 1795 and again in 1810. Similarly, only 22 larceny convictions were recorded for 1796 and 1814. Nevertheless, the substantial upturn in the number of larceny convictions during the immediate post - Napoleonic period remains, despite fluctuations in the figures, a marked departure from

1. Ref. Appendix 2 Tables A and B.

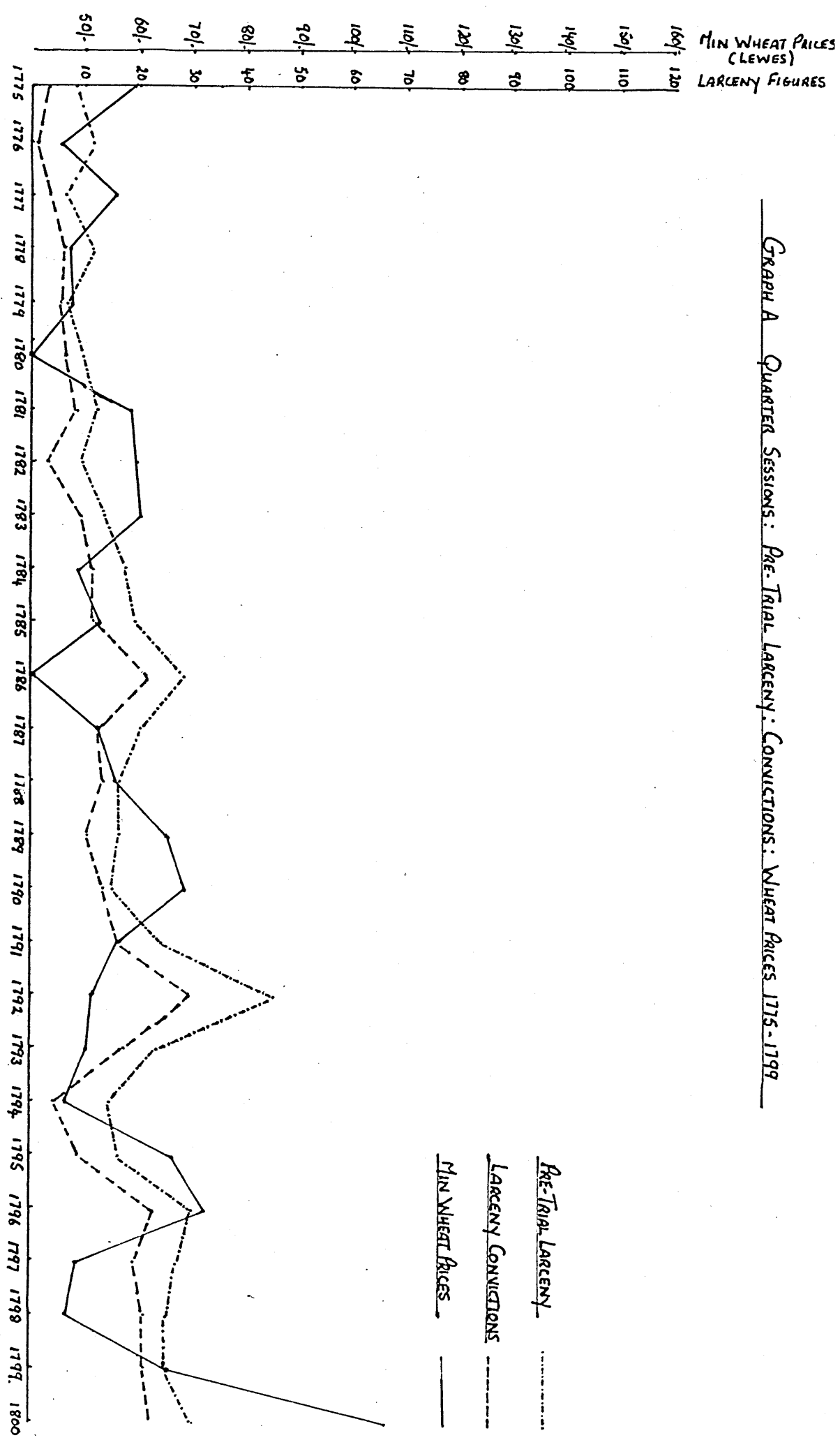
the pattern of criminal activity reflected in the figures for the preceding years.

It is perhaps worth noting that the figures for petty larceny convictions remain, on the whole, rather more constant throughout the period than those for grand larceny. Indeed, by far the most significant increase in the number of larceny convictions during the period 1815 - 1820 occurred in the latter category, with a total of 89 petty larceny convictions for the period as against 297 convictions for grand larceny. Since the dividing line between the two classes of larceny remained at 12d until the distinction was abolished in 1827, such a pattern of convictions is more likely the result of the relative decrease in the 'real' value of currency than a general progression towards the perpetration of 'higher' crimes.

That the level of Quarter Session larceny convictions increased during the period 1775 - 1820 is beyond doubt. An examination of the pre-trial calendars show, as might be expected, a very close relationship between the number of individuals indicted for larceny and brought before the justices and the number of offenders actually convicted. In fact, the relationship remains fairly constant throughout the period. (1) However, since the pre-trial figures more closely correspond to the indictment-based statistics of other investigations, and therefore invite clearer comparisons, these are used in favour of convictions here. During the sixteen year period from 1775 - 1790 a total of 216 individuals were indicted for larceny and brought before the justices in Quarter Sessions. The ten years from 1791 - 1800 saw this figure increase to 257. The first decade of the nineteenth century saw only a slight increase in the indictment figures to 261. However, the pre-trial calendars reveal a substantial increase in larceny indictments to 667 for the years 1811 -

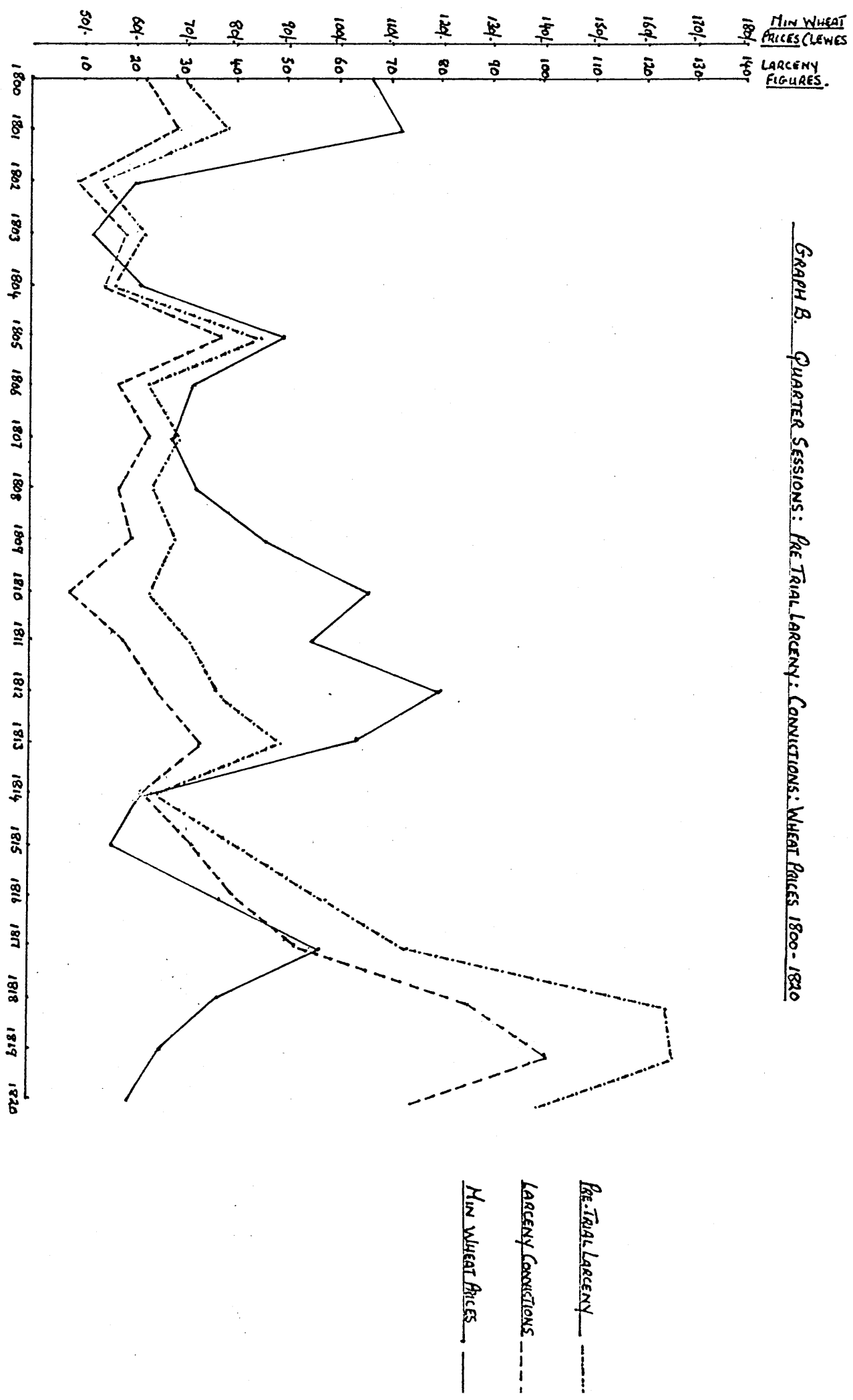
1. Ref. Graphs A and B. p 25A and B.

GRAPH A QUARTER SESSIONS: PRE-TRIAL LARCENY: CONVICTIONS: WHEAT PRICES 1775-1799



Sources: Pre-Trial Larceny and Minimum Wheat Prices derived from the Sussex Weekly Advertiser's pre-trial calendars and corn inspectors' returns. Larceny Convictions derived from Quarter Sessions Order Books (p. 25-33).

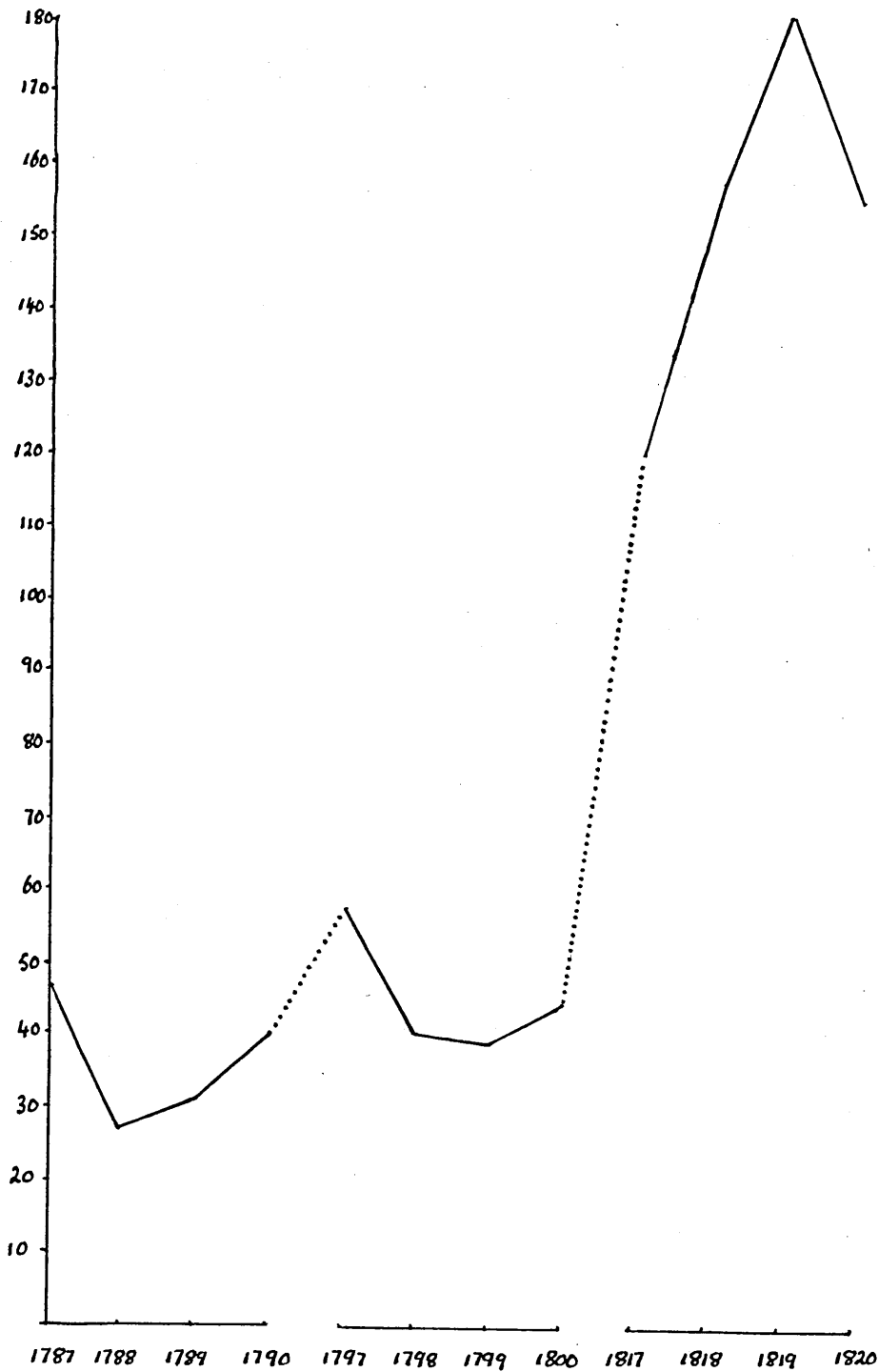
GRAPH B. QUARTER SESSIONS: PRE-TRIAL LARCENY: CONVICTIONS: WHEAT PRICES 1800-1820



SOURCES: PRE-TRIAL LARCENY AND MINIMUM WHEAT PRICES DERIVED FROM THE SUSSEX WEEKLY ADVERTISER'S PRE-TRIAL CALENDAR'S AND CORN INSPECTOR'S RETURNS. LARCENY CONVICTIONS DERIVED FROM QUARTER SESSION ORDER BOOKS (POEW 34-44)



GRAPH C. QUARTER SESSIONS/ASSIZE INDICTMENTS: 1787-1790; 1797-1800; 1817-1820



SOURCE: SUSSEX WEEKLY ADVERTISER'S PRE-TRIAL GAOL CALENDARS

1820, the period 1815 - 1820 accounting for a remarkably high 525.

J.M. Beattie, in his study of the indictments brought before Quarter Sessions and Assizes in Surrey and Sussex notes an increase in reported crime in rural Surrey and Sussex at the end of the eighteenth century, and writes:-

The extent of the rise in rural offences in the last third of the eighteenth century is understated by the number of cases brought to the court. A substantial increase of property crimes in rural areas after a century or more of stable or declining levels seems clear from the bills presented to the grand juries in both Assizes and Quarter Sessions. (1)

Such statistical evidence, derived as it is from potentially volatile sources, the consistency and reliability of which cannot be verified, must be interpreted with extreme caution. What is clear is that the Sussex Court of Quarter Sessions recorded a gradual increase in the number of larceny offences with which it had to deal from the end of the eighteenth century, and that the level of larceny brought before the court soared during the years immediately following the Napoleonic Wars.

In investigating the possible reasons for the increase in the level of recorded crimes, particularly crimes against property, at the end of the eighteenth century Beattie finds a positive correlation between grain prices and property crimes, writing:-

In the rural parishes of Surrey and Sussex there seems to be a general relationship both over the long term and in year to year changes between the movement of prices and

1. J.M. Beattie 'The Pattern of Crime in England 1660 - 1800'  
Past and Present No 62 Feb 1974

the amount of larceny in the community . . . Both the short term sensitivity of indictments to prices and their general long term relationship argue that a large number of people were close enough to the subsistence line for changes in prices to register immediately in their fortunes and for them to turn to theft to fill the gap. (1)

The underlying assumption inherent in such a contention is that the level of reported crime represents an increase in 'actual' crime, which, given the absence of another factor powerful enough to decisively affect the pattern of recorded criminal activity, seems reasonable. The suggestion that the price of grain was the single most decisive factor in stimulating the level of crime, and more especially, larceny, within the community, at least as far as Sussex was concerned, is rather less convincing. Certainly the price of grain, particularly wheat, oats and barley, played an important part in increasing or reducing the tensions and anxieties of any community which depended, for its general well-being, on a wheat-based diet. Indeed, there is ample evidence that in Sussex the price of grain, especially during the 1790's provoked quite a powerful reaction among the labouring classes and led, on several occasions, to collective action to alleviate the distress that high grain prices caused. (2) R. B. Rose, in his study of price riots in eighteenth century England, concludes:-

We should be justified in regarding the English price fixing riot, in perspective, as primarily and typically an eighteenth century phenomenon

1. J. M. Beattie OP CIT p 92

2. See Chapter 3 'Dearth and Disorder'.

... in general it is possible to say that price fixing riots, like hunger riots, followed clearly the patterns of the fluctuating fortunes of the grain trade. (1)

Nevertheless, to attribute the apparent increase in the level of property crime simply to the local price of grain may well be to ignore other plausible contributory factors, as well as to under-estimate the extent to which the gentry perceived and relieved the worst effects of dearth and distress.

In Sussex the Corn Inspector's returns were published on a weekly basis in the Sussex Weekly Advertiser and Lewes Journal. The local price of wheat, oats and barley for the market town of Lewes were given, and occasionally the price of grain for other local market towns were provided. In addition to this information the Advertiser also gave the London prices for grain, together with the average prices for England and Wales up to May 1802. These Corn Inspector's returns were presented in the form of the price per quarter of a Winchester bushel. In attempting to compare the figures for larceny to the price of grain I have relied upon the information presented in the Advertiser rather than a more general, national, index of grain prices. Whilst these grain prices do appear to follow the national trend, it is hoped that they will reflect more accurately the local situation, and, by being published on a weekly rather than a quarterly basis, will be more responsive to the minute changes and fluctuations in market value caused by specifically local circumstances, such as the disruption of local supplies. Also, since the most significant rise in the figures for larceny occur during the first two decades of the nineteenth

1. R. B. Rose 'Price Riots and Public Policy in Eighteenth Century England' International Review of Social History Vol. 6 1961 p. 283.

century, I have taken the grain price figures from 1795 - 1820. (1)

The fluctuations in the Lewes price of grain were really quite considerable throughout the period 1795 - 1820. The average minimum price of wheat for the first quarter of 1795 at Lewes market began at 55/- per quarter. During the period investigated however there were five spans during which the local price of wheat and other cereals reached a comparatively high level: from December 1795 - April 1796; November 1799 - October 1801; October 1804 - October 1805; January 1810 - September 1813 (with the exception of 1811 which saw a brief fall in prices to a minimum of 60/- for wheat); and lastly, October 1816 - August 1817. During the first quarter of 1796 local wheat prices rose to an average minimum of 95/- per quarter, and reached something of a peak in March with a price of 104/-. The prices of oats and barley however showed a much less significant increase than that of wheat. The second period of high prices, which began a quite rapid upturn in late August 1799 and extended for some twenty six months, was punctuated by very short intervals of excessively high grain prices. In October 1799, when wheat prices were nearing 80/- per quarter, the Advertiser commented:-

The fears we expressed in our last for the more distant consequences of the heavy rains which fell on yesterday f'night we are now concerned to state have, in the Eastern part of the Country, been realised to an extent almost beyond conception. The damage done by high and rapid flowings of the water to bridges, mills, roads, hop gardens and corn fields is immense. (2)

1. The minimum wheat price figures for the entire period 1775 - 1820 are however presented in graphs A and B. pp 25a - 25c

2. Sussex Weekly Advertiser October 14th 1799.

By December 1799, when the average minimum price of wheat had risen to 90/- or more, the extent of the damage occasioned by the poor weather conditions had become apparent and the Advertiser gloomily commented:-

It is now pretty well ascertained that throughout the greater part of this Island the wheat crop has been badly got in and although in some districts of the South Downs, as also in other parts of England the crop has been good and well harvested, yet generally where it is tolerably got in it does not yield more than two thirds of a good crop. (1)

On the possibility of securing adequate supplies of grain from other sources the Advertiser was equally pessimistic and noted:-

The prospect of relief from abroad is more discouraging than it was during the scarcity of 1795 - 1796. The North of Europe does not promise much, the supplies from thence have been scanty and the seasons will render even this sparing assistance even more precarious ... France is the only country that seems free from the dread of scarcity; possibly some corn may be had from thence through neutral bottoms, and one advantage may arise from her having sufficiency, namely, she will not be a competitor in other markets. (2)

The local deficiency in the supply of grain was to have disastrous

1. Sussex Weekly Advertiser December 2nd 1799.
2. Sussex Weekly Advertiser December 2nd 1799.

consequences for the price of wheat. By the end of June 1800 the minimum price of wheat had reached 148/- per quarter, barley was completely unobtainable and oats, which had sold at 17/- a quarter at the beginning of 1797, were fetching 40/- per quarter. The average minimum price of wheat for the country as a whole for the end of June 1800 was 123/- per quarter. August saw a brief decline in the price of grain within the County with a low of 72/- per quarter being reported, though barley still remained unobtainable and oats still fetched 30/-. The price fall recorded for August was to prove only a temporary respite because by the Autumn a quite substantial increase in prices was noted. A high price level was maintained throughout the Winter and in March 1801 the minimum price of wheat topped 160/- per quarter. This period of high wheat prices reflected the national trend, and lasted until October 1801, when the local price of wheat fell to a relatively low 60/- per quarter. A period of stability in grain prices followed, and this lasted until 1804, when the cost of grain began to rise again. In November of that year the price of wheat had again reached 100/- and prices in excess of this figure were regularly recorded until September 1805. The last three months of 1805 saw the price of wheat fall to an average minimum of 62/- per quarter, barley 30/- and oats 22/-.

The eleven year period from 1811 - 1820 saw similar fluctuations in the minimum price of wheat and other cereal crops. Throughout 1810 the average quarterly price of wheat remained in excess of 100/- and reached a peak of 120/- in August. A slight fall in prices during the first six months of 1811 was again followed by a long period of high prices which lasted until the last quarter of 1813. 1812 was probably the most crucial year in terms of wheat with a minimum average price of 122/- per quarter for the year and with a maximum price of 160/- per quarter for August. A period of relative price stability, from the end of 1813 until the middle of 1816, provided some relief from the high prices of the preceding period

but by December 1816 wheat prices in excess of 100/- per quarter were again being recorded at Lewes market. This final period of high cereal prices lasted until the last quarter of 1817 and appears to have reached a peak in June of that year when wheat prices varied between 116/- and 140/- per quarter, barley fetched as much as 60/- per quarter and oats as much as 49/-. 1818, 1819 and 1820 saw the price of wheat, oats and barley fall quite substantially. By the end of 1818 the average minimum price of wheat had fallen to 72/- per quarter and by the end of 1819 to as little as 60/- per quarter. Finally, by the end of 1820, the price of wheat had fallen to its lowest level for more than twenty years when it stood at 47/- per quarter.

An examination of the figures presented in the Quarter Sessions records for the period 1795 - 1820, as I have already shown, reveal a gradual, though up until 1816 spasmodic, increase in the level of larceny. However, it does not appear to follow that, during this period at least, the increase in the level of larceny runs parallel to the cycle of grain prices for the County. 1795 began with grain prices at a relatively moderate level. The pre-trial gaol calendars also show the level of larceny brought before the justices to be relatively low, at just 16 indictments for the year. The gradual increase in the price of wheat and other cereals was also accompanied by an increase in the level of larceny, with Quarter Sessions hearing 30 cases during the course of the following year. However, the substantial decrease in the price of grain that characterized the period from September 1796 to August 1799 showed no reduction whatsoever in the number of larceny cases brought before the justices. Similarly, the period of very high grain prices which lasted for most of 1800 and 1801 foreshadowed only a very slight increase in the number of individuals indicted for larceny being brought before the justices to 28 and 38 respectively. The high grain prices of 1805 certainly coincided with an increase in the level of larceny brought before the justices, with 45 names being recorded in the pre-trial



calendars for that year. However, grain prices were significantly lower than the level recorded for 1802 and, later, for 1810 and 1812, and the level of larceny for these years was not uncharacteristically high for the first two decades of the nineteenth century. Again, during the extended period of relatively low and stable grain prices of 1814 there was a corresponding drop in the number of Quarter Session larceny indictments to 25, from a total of 49 for the preceding year. However, this decrease in the level of larceny was not continued into 1815, when the price of grain fell to its lowest level for eleven years. Throughout 1812 the price of wheat never once fell below a minimum of 104/- per quarter, and more often than not reached a figure in excess of 120/-, the highest so far recorded, but the level of larceny, at 37 Quarter Session indictments and only 25 convictions, shows no real departure from the pattern of gradual increase that characterizes the period up to 1816.

The post - Napoleonic increase in the volume of larceny cases brought before the justices in Quarter Sessions was by far the most significant departure from the general level recorded during earlier years. Yet apart from a spate of high grain prices that continued almost unabated throughout 1817, the post - war years did not see the price of grain rise to anything like the wartime level. In fact, with the exception of 1817, wheat prices were a good deal lower than for rest of the period investigated and compare very favourably with the lows of 1797 - 1799 and 1802 - 1804. Nevertheless, in 1818 the pre-trial calendars show a substantial increase in the number of larceny indictments, from 74 to 125. Convictions rose accordingly from 52 in 1817 to 86 in 1818. The highest level of recorded larceny was reached in 1819, when the number noted in the pre-trial calendars was 126 and convictions were at their highest level for the entire period, at 101. At the same time wheat prices fell to between 60/- and 74/- per quarter.

Finally, the advantage of the Advertiser's weekly grain price returns is that the monthly variations in the price of wheat and other cereals can be matched to particular Quarter Sessions meetings. If grain prices were the decisive factor influencing the level of larceny brought before the Court then the high grain prices of October, November and December 1810 should have been reflected in the volume of larceny indictments brought before the justices at the January sessions of 1811. However, at the Chichester Epiphany sessions of 1811 only two offenders were indicted for larceny and both were subsequently convicted. The corresponding sessions for the Eastern Division saw only seven larceny indictments with, again, only two Quarter Session convictions. The April, May and June grain prices for 1812 were similarly very high but, yet again, only six larceny indictments were brought before both the Eastern and Western Divisions, and these resulted in five convictions. The highest number of larceny indictments to reach the Court of Quarter Sessions at a single session arose out of the proceedings of the Lewes justices in January 1819. 45 larceny indictments were presented and 37 felons were subsequently convicted. Wheat prices for the preceding three months however had remained at a fairly moderate 72/- to 84/- per quarter.

The post - Napoleonic rise in the volume of larceny indictments brought before the justices in Quarter Sessions certainly suggests that some factor, or combination of factors, were having a marked effect on the level of prosecuted theft since it seems unlikely that such a substantial upturn could result from a peculiarly accidental deviation in the pattern of larceny convictions. Though grain prices within a rural community were undoubtedly extremely important to its general wellbeing, during the period examined the absence of a close relationship between the high price of wheat and other cereals and the level of recorded larceny suggest that more complex, or at least less obvious conditions were playing an

important part in the rising level of theft. More importantly, high grain prices do not provide an adequate explanation for the post-Napoleonic upturn in the number of larceny indictments brought before the County Bench.

Although grain prices alone provide an inadequate explanation for the post - Napoleonic upturn in the level of larceny in Sussex, it may well be the case that this increase was very much the result of the prevailing agricultural conditions within the County during the period 1815 - 1820. Conditions for arable farming in Sussex were by no means ideal and a depression in this branch of agriculture which provided the foundation of the County's economy, was bound to have profound consequences. Agriculturally, Sussex may be broadly divided into two areas comprising the South Downs, and the Wealden Districts to the north. The former consists of a range of chalk hills with a fairly sparse covering of topsoil and the latter consists chiefly of clay soil on a sandstone formation. The disadvantages of Sussex in terms of agricultural production had long since been recognized and in 1660 Gervase Markham observed:-

The Weald was for many years held to be a wild desert, or most unfruitful wilderness, and such is the nature and disposition of the soyl thereof to this very day, for it will grow to frith or wood if it be not continually manured and laboured with the plough and kept under tillage. It is throughout of a very barren nature and unapt either for pasture or tillage, untill that it be helpen in some manner of comfort, as dung, marle, fresh earth, fodder, ashes or some other refreshments, and that seemeth to have been the cause for which in old times it was used as a wilderness, and kept, for

the most part, with herds of deer and droves of hogs as specified in divers historial relations. (1)

It would seem that little by way of improvement was effected during the course of the eighteenth century, despite the advances in agriculture in other parts of the country, particularly East Anglia and the Midlands. Arthur Young, reporting on the agricultural conditions within the County some one hundred and fifty years later observed that:-

... obstruction to tillage reigns over two thirds of this County. The timber, woods, coppices and shaws are sufficiently mischievous to grazing land, to the growth of corn they are ruinous and destructive to the last degree. The enclosures are so small, and the soil so wet and binding, that to let such land dry is no easy task and though the wind and sun is no more necessary here than elsewhere, yet each hedgerow is a nursery for timber, and so enormously thick, as to convert the County into the appearance of a forest and the consequences to the corn is indeed deplorable. (2)

Despite the natural disadvantages that restricted agricultural production within the County, by the end of the eighteenth century, the importance of the County's agricultural base had increased with the decline of other industries. The Wealden iron industry had once featured among the strongest of the County's industrial enterprises, providing according to

1. WILLIAM PAGE (EDT) THE VICTORIA HISTORY OF THE COUNTIES OF ENGLAND - A HISTORY OF SUSSEX Vol. 11 London 1907 p 35.

2. Arthur Young. GENERAL VIEW OF THE AGRICULTURE OF THE COUNTY OF SUSSEX. 1813.

a Grand Jury report of 1661, "employment to many thousands of poore people, farmers and others". (1) By the mid-eighteenth century the iron industry of Sussex had more or less died out, giving way to the new coal-based centres of production of the North. Battle and a few other Wealden parishes continued to exploit the local charcoal industry by developing something of a gunpowder industry but this remained a very small enterprise by comparison to the production of iron. By the end of the eighteenth century Sussex had also long since ceased to be a county of famous ports. The silting up of the harbours had destroyed the mercantile importance of all her main ports, though a thriving fishing industry still provided an important source of employment in coastal parishes.

It is perhaps worth noting too that smuggling, especially during the mid-eighteenth century, provided important, if illicit, support to the County's economic base. Indeed, Cal Winslow points to something approaching a 'guerilla war' between Sussex smugglers and the authorities during the 1740 s, fuelled by the growth in popularity of tea drinking and a consequent increase in this traffic. (2) However, the free trade regulations of William Pitt, and in particular the reduction of duties on imported tea after 1784, undoubtedly contributed to a decline in smuggling. The French Government's abandonment of the Pitt-Vergennes commercial treaty in 1793, together with the onset of war between Britain and France, brought hope among some of a revival in smuggling. In March 1795 the Advertiser reported that:-

... the smugglers begin to pick up their ears in hopes  
that the additional duties on tea and spirits will give

1. QO/EW Lewes Oct. 1661.

2. Cal Winslow, 'Sussex Smugglers', in Hay et al, Albion's Fatal Tree pp 119 - 166.

room for the revival of their contraband traffic. (1)

Nevertheless, to judge from the numbers of those brought up before the Courts of Quarter Sessions and of Assize for breaches of 'economic regulations', smuggling during the period investigated did not reach the heights of the 1740 s.

Although agriculture remained firmly at the forefront of the industrial scene the County's agricultural base was however fundamentally weak. Further, apart from the natural topographical disadvantages that plagued the local farmer, it appears that little attempt was made to revitalise the agricultural industry during the course of the eighteenth century through extensive capital investment. Whereas some parts of the country experienced something of an agricultural revival during the century these developments had, it seems, largely bypassed Sussex. Although the County did have among its landed ranks one or two notable improvers, such as the Earls of Egremont, capital investment was not enough to fundamentally change the face of Sussex agriculture. It seems that the natural disadvantages of Sussex in agricultural terms was enough to deter all but the most enterprising of local landowners. J. Lowerson also identifies the local practise of yearly verbal agreements between landlord and tenant as a further disincentive to investment in agriculture since, he argues, such agreements provided little real security for any significant investment in improving schemes. (2)

Thus the state of Sussex agriculture was poor even before the acute depression that followed the transition from wartime boom to peacetime

1. Sussex Weekly Advertiser 2nd March 1795.

2. J. Lowerson 'SUSSEX AND INDUSTRIALISATION. ECONOMIC DEPRESSION AND RESTRICTIVE ELEMENTS - 1700 - 1800' IN THE ONSET OF INDUSTRIALISATION NOTTINGHAM 1980  
M. PALMER (ED)

slump disrupted the agricultural scene still further. The artificial market and secure profits that followed the onset of the Revolutionary and Napoleonic Wars made corn and cereal cultivation a very profitable branch of the local agricultural industry. Land values almost doubled during this period and consequently many landowners revised their rents. (1) Such prosperity however belied the intrinsic difficulties of Sussex agriculture that had beset the farming community throughout the eighteenth century, and when the prosperity of the Napoleonic period came to an end these difficulties served to compound the problems that arose in the wake of the post-war depression.

The post-war difficulties experienced within the agricultural community were bound to have a profound effect on those <sup>FOR</sup> whom agricultural labouring provided the prime source of income. The Board of Agriculture's survey on Sussex, conducted in 1816, reveals the extent to which farmers saw unemployment, or at least under-employment, as the prime cause of social distress. In reply to the Board's enquiries as to the conditions within the County's agricultural community John Woods, a West Sussex farmer, observed:-

The state of the labouring poor is very deplorable, many of them can get no work at all, and others are obliged to work at lower terms, for no farmer will employ more men than what he has an absolute occasion for. (2)

Similarly, John Ellman, who farmed lands in Glynde and Firle in the Eastern Division of the County, saw distress through want of work as

1. H.G. HUNT 'AGRICULTURAL RENT IN S.E. ENGLAND 1788 - 1825' AGRICULTURAL HISTORY REVIEW Vol 11 1959
2. BOARD OF AGRICULTURE THE STATE OF THE KINGDOM ADAMS AND DART 1970. p. 338

a prime consideration and noted:-

The circumstances denoting distress are, that many farmers are unable to pay their labourers, and consequently (they are) obliged to discharge many, and not being able to pay any rent, or tradesmen's bills ... (1)

Such views were again echoed by John Upperton, another East Sussex farmer, who saw the main reason for social distress within the County as:-

The circulation of paper money, had blighted crops two years and at a very low price, on account of the importation of corn, which glutted the market before the Act was passed, and the number of men out of employ ... The poor suffer from early marriages and the inability of the farmer to employ them. (2)

Farmers in parish after parish reported to the Board the extent to which the labouring poor were suffering from the lack of work. In Glynde the state of the 'labouring poor' was reported as "worse than ever known". Chichester reported "great distress", in Firle there was "great want of employ", the labouring poor in Chil Grove were "worse than they were", whilst those of Aldsworth suffered from "great want of employment", their condition being described as "deplorable". Under such circumstances it may well be the case that a significant decrease in the price of grain

1. BOARD OF AGRICULTURE OP CIT p. 340

2. BOARD OF AGRICULTURE OP CIT p. 443



would have exacerbated the aggravated state of the labouring poor rather than alleviated it. As much was implied by the report of a Tillingworth farmer who described the condition of labourers as "worse than when corn was dear". (1)

Even given a possible tendency among members of the farming community to exaggerate the link between high rents and their inability to employ labour, the figures for expenditure on poor - relief give substance to the general alarm felt as to the plight of the agricultural labourer. The expenditure on poor - relief within the County, like the figures for larceny, show a gradual, though erratic increase during the first two decades of the nineteenth century. Over this period Sussex became one of the highest spending counties in the country in terms of poor - relief expenditure. (2)

Using poor - relief spending as a guide to general 'depression' or lack of employment within a given county is, like so many other statistical indicators, fraught with difficulties. It is for instance undoubtedly true that any 'Speenhamland' type system of relief, based upon the price of grain, will show a close relationship with grain price levels. It is also possible that the very adoption of a system of 'rate in aid of wages' depressed the level of the agricultural wage and therefore created in part the difficulties it sought to remedy. Nevertheless, it is the case that poor - relief expenditure in Sussex remained high despite a drop in grain prices in the post-war years. (3)

Of the increase in poor-relief expenditure during the Napoleonic period D.A. Baugh writes:-

... the remarkable harmonious movement of wheat

1. BOARD OF AGRICULTURE OP CIT p. 336
2. D.A. BAUGH THE COST OF POOR RELIEF IN SOUTH EAST ENGLAND 1790 - 1834 ECON HIST REVIEW 2nd SERIES Vol. 28 1975
3. D.A. BAUGH OP CIT p. 55

prices and per capita poor - relief expenditure down to about 1814 suggests that relief during this first stage was essentially a response to high food prices rather than unemployment. (1)

However, the moderation of the price of grain which came about during the immediate post-Napoleonic period was not reflected in poor- relief expenditure, which, though reaching a peak in 1817 along with a temporary post-war upturn in grain prices, continued to remain at the highest recorded level, apart from the grain price 'crisis' years of 1801 and 1812. Again, the upward trend in poor - relief expenditure appears to have been a prime source of concern in most of the parishes featured in the Board of Agriculture's survey. Although in the parish of Hetching the poor rate was reported to be decreasing, in Glynde the poor rates were 'higher than in 1812', the Chichester rate was reported to be 'increasing', in Firle the rate was 'as high as in 1812 and rapidly increasing' whilst the Chil Grove poor rate was 'advancing rapidly'. (2)

The notion that the system of 'out-relief' adopted by the Sussex Justices itself depressed the agricultural wage is discounted by Baugh, who points out that the agricultural wage in fact rose during the Napoleonic period. He sees the regulating factor in agricultural wages as demand, rather than the disincentive a 'rate in aid of wages' may have produced. Thus it seems reasonable to suppose that the depression which prevailed in post-war Sussex not only created fierce competition for labouring work, but also had the more general effect of lowering the agricultural wage in a saturated labour market. Baugh concludes:-

Relief expenditure stayed high in the 1820s, not

1. D.A. BAUGH. THE COST OF POOR RELIEF IN SOUTH EAST ENGLAND 1790 - 1834. ECON HIST REVIEW 2nd SERIES Vol 28 1975 p. 59
2. BOARD OF AGRICULTURE OP CIT p. 336.

because parish officers were responding to high prices, but because of chronic unemployment. With the war-time agricultural boom over, farming profits shrank and labour became redundant. During the second transitional stage (1814 - 1820) both forms of distress - post-war unemployment and a harvest crisis from 1816 - 1818 were experienced. (1)

Undoubtedly, two other factors served to a greater or lesser degree to augment the problem of a saturated labour market. The return of those servicemen for whom the end of the Napoleonic Wars brought a return to civilian life may well have served to heighten the acute distress brought about by the lack of employment, though the extent to which this occurred in Sussex is impossible to determine. Secondly, and this factor may be related to the first, the population of the County increased quite dramatically during the period 1811 and 1821. In 1801 the population of the County had risen to 187,833 and by 1821 a figure of 233,328 had been reached, an increase of almost 25%. The population of Brighton doubled during the period 1811 - 1821, increasing from 12,012 to 24,429.

Thus it seems likely that the post-war increase in the number of larceny convictions arising out of those cases brought before the justices were more the result of acute agrarian depression than any other single factor. Labourers, finding their legitimate sources of income increasingly strained, found recourse to criminal activity something of an alternative. Both the decline of alternative sources of employment within the County, and the inherent weaknesses of farming, heightened rural distress which became severe enough to be reflected in the County's criminal statistics.

1. D.A. BAUGH, OP CIT p 61 - 62

A close relationship between this kind of agrarian distress - falling as it did upon the common labourer - and the incidence of larceny, would certainly explain the fact that out of the 354 males convicted of grand or petty larceny during the period 1815 - 1820, 350 are described as 'labourers', in the Quarter Session records, though admittedly such a broad term says very little about the true nature of the employment of these people. (1)

That the Quarter Sessions figures for larceny and the availability of work are to an extent related is also evidenced by the seasonal variations in the number of indictments presented to the justices, though these seasonal variations are not perhaps large enough to be conclusive. The four quarterly meetings of the justices, extended to eight in Sussex by the adjournment of the Court of Quarter Sessions from the Western Division of the County to the Eastern Division, took place most frequently in January, April, July and October. At each of these quarterly meetings the offenders brought up during the previous three months usually appeared, unless for one reason or another the case was held over to the next session - most often in cases where witnesses failed to appear. The figures for larceny, as recorded in the pre-trial calendars of the Court, certainly show something of a tendency to be greater in the January sessions for both Divisions than for the October sessions. During the period 1810 - 1820 693 indictments for larceny were brought before the justices in Quarter Sessions. Of this number the January sessions accounted for 267 indictments, the April sessions for a further 156, the July sessions 141 and the October sessions 129. In percentage terms a substantial 38.52% of larceny indictments for this eleven year period resulted from the Epiphany sessions and a further 22.51% from the Easter Sessions. 20.34% of pre-trial larceny indictments arose out

1. For further discussion see pp108-109.

of the Midsummer sessions whilst only 18.61% were accounted for by the Michaelmas Quarter Sessions gatherings. The number of Quarter Sessions convictions also reflect, as might be expected, this seasonal variation with 36.48% of convictions for larceny resulting from the Epiphany sessions, 23.57% from the Easter sessions, 20.73% from the Midsummer meetings of the Bench and a relatively moderate 19.10% arising out of the Michaelmas sessions. Such figures certainly reveal a greater tendency to larceny during the winter months and lend some credence to the notion that, because of the seasonal nature of agricultural work, labourers turned to larceny in greater numbers in the face of winter under-employment.

One final point to emerge from the examination of Sussex Quarter Session indictments for theft in relation to prevailing economic conditions within the County is that conclusions drawn on the basis of material relating to a specific county cannot be automatically extrapolated to form the basis of more general theories of dearth - theft or depression - theft relationships. A thorough examination of prevailing local socio-economic conditions is an essential precondition to the interpretation of criminal statistics. Douglas Hay, in his examination of Staffordshire indictments during the last half of the eighteenth century (1), finds a rather more convincingly positive relationship between grain prices and thefts, at least in wartime, and writes:-

... the increase in non-capital theft and the less serious capital offences suggests that petty thefts were committed in dearth by people who were not

1. DOUGLAS HAY 'WAR, DEARTH AND THEFT IN THE EIGHTEENTH CENTURY ENGLISH COURTS: THE RECORD OF THE ENGLISH COURTS'. PAST AND PRESENT No. 95 MAY 1982.

committing them before, and that those who had done so were obliged to increase the frequency with which they stole because of the high price of food. (1)

Douglas Hay also goes on to point out that women did not remain outside the dearth-theft continuum and identifies an increase in female indictments as a result of dearth, concluding

... as the appalling pressure of dearth reached more and more families, apparently more women resorted to petty theft. (2)

The effects of dearth and depression in Sussex appear to have had no great impact upon incidence of female larceny. (3)

On the degree to which depression, rather than high grain prices, provided a stimulus to theft Douglas Hay remains rather more guarded:-

... a preliminary summary shows that the economic effects of war were sufficiently different in the principal industries of Staffordshire to raise doubts that depressions in peacetime have much to do with the great increase in indictments for thefts at such times. (4)

The evidence for Sussex clearly does not lend a great deal of support to such conclusions. Sussex agriculture, unlike the iron and pottery industries of Staffordshire, was unable to continue its wartime momentum and the dislocation caused by the transition from war to peace at the end of the Napoleonic Wars appears to have had a more profound effect on the

1. DOUGLAS HAY OP CIT pp 134-5.
2. DOUGLAS HAY OP CIT IBID
3. REF APPENDIX 6 and 7.
4. DOUGLAS HAY OP CIT p 136.

labouring population here than in some other counties. It would certainly appear that more general conclusions about the dearth-theft or depression-theft relationship should be applied with great caution to the local scene since local conditions quite obviously dictated the extent to which either or both of these pressures served to provide a stimulus to criminal activity.

Although the opportunities for employment appear to feature as the prime consideration when assessing the various factors that may have contributed to the stimulation or declination of incidence of larceny in Sussex during the post-Napoleonic period, the level of employment within the community may provide only part of the explanation for the more general rise in the level of larceny and other kinds of criminal activity over the period as a whole. The changing nature of the criminal code, during the course of the eighteenth century, may have been extensive enough to be reflected in the figures for larceny over the long term. The criminal law certainly seems to have undergone substantial developments both in bringing property previously outside the scope of the law well within its parameters and in the removal of benefit of clergy from an increasing number of property crimes. Game legislation, considered more fully later, provides a good example of eighteenth century legislative expansionism.

The consistent theme to such statutes was one of consolidation or elaboration, not retraction or regression. Capital statutes alone, it has been estimated, grew from about 50 to over 200 between the years 1688 - 1820.

(1)

Douglas Hay comments:-

This flood of legislation is one of the great facts of

1. DOUGLAS HAY 'Property, Authority and the Criminal Law' in Hay et al Albions Fatal Tree Penguin 1977 p 18.

the eighteenth century, and it occurred in the period when peers and gentry held power with least hindrance from Crown or people. (1)

Obviously the Court of Quarter Sessions itself was not directly concerned with the growth of the number of capital statutes. Nevertheless, the general increase in the volume of criminal legislation that characterises the eighteenth century must have had at least some impact on the volume of offenders brought before the Courts. However, though such an increase in criminal statutes may account in part for a general increase in larceny over an extended period, changes in the criminal code do not provide sufficient explanation for the sharp upturn in the level of simple larceny in Sussex during the period immediately following the conclusion of the Napoleonic Wars.

The changing nature of the jurisdiction of the Sussex Court of Quarter Sessions may also provide another variable affecting the volume of larceny cases brought before the justices. The jurisdiction of the Sussex Court of Quarter Sessions has already been discussed. Suffice it to say that the jurisdiction of the Court was not rigidly defined by law and that this varied from county to county, and at least in Sussex it seems, from period to period. The trend in Sussex was towards the hearing of a greater number of 'higher' crimes. By the second decade of the nineteenth century the Sussex justices were hearing quite substantial grand larceny cases which would not have appeared out of place at the Assize Court. In July 1817 for example Joseph Tyrrell was convicted by the justices of the Eastern Division of the County for the theft of a watch, valued by the Court at 10/-, a locket, trousers, shoes and stockings valued at 4/-,

1. Douglas Hay OP CIT IBID



and nine one pound 'promisory notes'. (1)

The justices assembled at Petworth in January 1818 convicted James Bailey, a labourer from Bosham, for the theft of sixteen bushels of oats and peas valued at £3.14.6d. (2) In July 1818 Moses White, a labourer from Clayton who appeared before the Lewes justices, was transported for a seven year term for stealing six bushels of flour to the value of £4.4s.0d. (3) In April 1819 the Lewes bench convicted Charles Wood, a labourer from Rotherfield, for 'obtaining goods' to the value of £7. by 'false pretences'. (4) In October 1820 the justices of the Eastern Division heard the rare case of Thomas Neil, whom they convicted for the theft of 'goods' to the value of £20. (5) All of these cases would have warranted prosecution before an Assize Court judge, but none more so than the case of Henry Hall, who appeared before the Lewes justices in April 1814 and who was subsequently convicted for the theft of 150 lbs of archangel down, valued by the Court at a staggeringly high fifty pounds. (6)

That the Sussex Court of Quarter Sessions was hearing progressively more serious cases would also explain, at least in part, the substantial increase in grand larceny cases over the period investigated. However, again, it seems unlikely that a sudden downward dissemination of judicial business to the justices in Quarter Sessions from the judges in Assize was responsible for the sudden, and dramatic, post Napoleonic upturn in Quarter Sessions larceny offences.

It is certainly possible that the Assize Courts, in some counties, had to deal with an increase in the proportion of 'higher' capital offences during

1. E.S.R.O. QO/EW LEWES JULY 1817.
2. E.S.R.O. QO/EW 43 PETWORTH JANUARY 1818.
3. E.S.R.O. QO/EW 43 LEWES JULY 1818.
4. E.S.R.O. QO/EW 43 LEWES APRIL 1819.
5. E.S.R.O. QO/EW 44 LEWES OCTOBER 1820.
6. E.S.R.O. QO/EW 41 LEWES APRIL 1814.

the post-Napoleonic period. Indeed, Douglas Hay has argued that post-war demobilization, by releasing from military and naval service not only the idle and 'dangerous' poor, but also a significant number of more experienced and daring criminals, resulted in a change in the nature of offenders brought before the Courts. (1) Hay argues that:-

If the effects of demobilization are responsible for the increase in indictment levels by increasing the amount of indictable behaviour, we should expect that the nature of the crimes brought before the courts should also change: serious offences, those demanding more expertise than simple larceny or more daring because they were capital offences, should increase more than less serious thefts.

This in fact is the pattern ... (2)

Douglas Hay goes on to note increases, for Staffordshire, in highway robbery (52%) burglary (54%) and horse-theft (62%) during the post-war years. Under such circumstances one could reasonably expect the hard-pressed Assize Courts to relinquish to the justices in Quarter Sessions those cases of simple larceny that were previously heard, perhaps because of the circumstances of the crime or the value of the stolen property, before the Assize Court judge.

It was certainly the case that the business of the Sussex Assize Courts, like the criminal work of the justices in Quarter Sessions, increased significantly during the period investigated. The four years from 1787 - 1790 saw 84 criminal indictments brought before the Assize Court judges. A relatively moderate increase in criminal indictments followed for the

1. DOUGLAS HAY 'WAR, DEARTH and THEFT!.. pp 135 - 146.

2. DOUGLAS HAY OP CIT p 143.

years 1797 - 1800, the figure being 104. However, the post-Napoleonic increase in criminal business of the Assize Court was every bit as significant as that of the Court of Quarter Sessions. The period 1817 to 1820 saw 244 indictments presented to the Assize Courts. Although certain kinds of capital offence did, of course, increase during the years examined, the pattern of crime for Sussex is slightly different to that identified by Douglas Hay for Staffordshire. Taking 'higher' crimes to mean those subject to prosecution under a capital statute, the proportion of capital convictions to convictions for less serious, non-capital offences shows little change during the years examined. During the period 1787 - 1790 35.44% of Assize Court convictions were capital ones; for the period 1797 - 1800 the proportion of capital convictions fell to 27.08% and the post-war period from 1817 - 1820 saw the proportion of capital convictions increase to 37.47%. The problem with Assize Court convictions, more than Quarter Sessions convictions where only lesser, non-capital offences were heard, is that the proportion of capital to non-capital convictions may not only reflect the nature of the offences brought before the Court, but also the attitude to the juries appointed to hear the offences. The practice of juries returning 'partial' verdicts, that is, finding the accused guilty of a less serious offence, was found by Douglas Hay to be most frequent in years of high prices and low crime rates (1) and may therefore have had the effect of under-representing the true conviction levels, especially during the period 1797 - 1800 when wheat prices rose from 46/- to 148/- per quarter. However, the indictment levels for the periods examined also indicate that serious capital thefts did not necessarily increase at the expense of less serious non-capital thefts in Sussex. Indictments for highway robbery amounted to 10.71% of the total number of Assize Court indictments for the period 1787 - 1790.

1. DOUGLAS HAY OP CIT pp 157 - 158.

During the period 1797 - 1800 this figure increased to 12.49% but fell significantly during the post-war years 1817 - 1820 to just 4.91%.

Convictions for highway robbery amounted to 9 for the first period, 10 for the second and 11 for the third. The theft of livestock, mostly horses and sheep, accounted for 30.95% of indictments for the first period, 17.30% for the second and 19.26% for the third. Horse and sheep stealing convictions increased from 18 for the periods 1787 - 1790 and 1797 - 1800 to 31 for the years 1817 - 1820. Of these more serious offences, the most significant post-war increase in the number of indictments is recorded for theft from dwelling houses and burglary. Indictments under these headings accounted for 22.61% of all Assize Court indictments for the earlier periods and increased to 32.37% for the post-war years.

Convictions under these headings amounted to 6, 11 and 55 for the three periods respectively, though not all of these were capital convictions.<sup>(1)</sup> Thefts from storehouses, mills and warehouses were also amongst the more common types of larceny. The proportion of indictments under this heading rose from 9.52% for the first period to 19.23% for the second and fell substantially during the post-war years to just 5.73%.

Although not all types of 'higher' larceny offences increased in proportion to other less serious and non-capital offences, it is nevertheless the case that in simple numerical terms indictments for burglary, theft from houses, shops and stores of various kinds, the taking of livestock and highway robbery increased from 62 for the years 1787 - 1790, to 71 for the period 1797 - 1800, and finally to a substantial 152 for the post-war years of 1817 - 1820. However, before such figures can be used to support the notion firstly, that the post-war period saw an increase in 'higher' larcenies rather than the less serious thefts and, more importantly, that the increase in Quarter Session larceny indictments during this same

1. FIGURES COMPILED FROM THE SUSSEX WEEKLY  
ADVERTISER'S GAOL CALENDAR AND ASSIZE REPORTS

period was primarily the result of a shift of emphasis in the Assize Court towards crimes of a more flagrant description, perpetrated by demobilized soldiers and sailors, and a consequent downward dissemination of simple larceny cases towards the justices in Quarter Sessions, the following points should be noted. Firstly, the increase in Assize Court larceny indictments outlined, which again were not necessarily capital indictments per se, should be seen alongside an increase in the number of Quarter Session pre-trial simple larceny indictments from 67 to 105 and finally to 425 over the same period. Secondly, and perhaps more importantly, the Sussex Court of Quarter Sessions, as already indicated, heard larceny cases throughout the period investigated, whereas the number of simple larceny prosecutions brought before the Assize Courts had always formed a relatively small part of the work of the Assizes. During the eight years from 1787 - 1790 and 1797 - 1800 only 11 simple larceny indictments were presented to the Sussex Assize Courts. There was very little simple larceny business to push down to the justices in Quarter Sessions. In fact the assize Court, like the Court of Quarter Sessions, found itself dealing, if anything, with a significant increase in this kind of criminal business. During the first two periods investigated simple larceny indictments accounted for 8.33% and 3.84% of the total number of Assize Court indictments respectively. During the period 1817 - 1820 this proportion increased to 14.34%. Such figures are more likely to suggest a slight upward, rather than a downward shift in simple larceny indictments and lend little support to the notion that the Sussex Assize Courts became a platform purely for the hearing of more flagrant and serious offences. It certainly seems that there was an increasing overlap between the kind of offences tried here and in the Court of Quarter Sessions, particularly during the post-Napoleonic period. That the biggest increase in larceny occurred towards the lower end of the spectrum, in cases of simple larceny, is quite obvious. This post-war increase in larceny in Sussex was more likely to have been the result of the work of the opportunist 'one-off' offender, tempted by his circumstances into taking a chance, than a result

of the activities of the professional, semi-professional or 'hardened' thief, willing to engage in 'higher' larceny, and run the risk of the gallows.

Changes in the propensity of individuals to prosecute offenders before the justices in Quarter Sessions may well provide another variable to help explain the level of indictments at a given period. The motives which lay behind an aggrieved party's decision to prosecute or not were obviously complex, and the decision to resort to formal redress through the courts may well have been the end result of a wide variety of considerations that went beyond the simple desire 'to see justice done'.

An individual may have found himself particularly well placed to exploit the 'informal' system of redress, as in the case perhaps of an employer/employee relationship in which the former had pecuniary control over the latter. Prosecution in the courts would undoubtedly be more likely to follow in cases where the victim of a theft had no other means of seeking redress, or in cases where special considerations made formal prosecution worthwhile. The activities of the Prosecuting Societies may also have been a factor that served to stimulate the number of criminal prosecutions in certain areas during a given period. Such Societies, by providing financial help to members in their efforts to both gain information about the perpetrators of criminal acts and in the prosecution of offenders in court, may well have contributed to the changing pattern of larceny indictments during the period investigated. Financial rewards were often offered for information which might lead to the successful prosecution of offenders responsible for committing particular offences in the Sussex Weekly Advertiser. In January 1795 the journal reported that:-

Whereas the following burglaries and robberies have lately been committed in the parishes of Warbleton and Heathfield ... and after several burglaries have been committed in the

neighbourhood, there is reason to suppose that a large gang has been concerned in committing these depredations. (1)

A reward of fifty guineas was offered for information leading to the conviction of the offenders. Similarly, in March of that year the Advertiser again reported that:-

Two anonymous letters, the one addressed to Mr Harman, miller at Duncton near Petworth in this County and the other to Mr Dale, miller at Petworth, threatening to pull down their respective mills and to distribute the corn found therein amongst the poor unless the price of flour was immediately lowered, were sometime since put into the post office at Petworth, for the discovery of the writer or writers either of which a reward of £150 and his Majesty's pardon to any accomplice, making such discovery, has been offered in the London Gazette. (2)

However, though such rewards undoubtedly provided an incentive for individuals to inform and co-operate with prosecutors, they were generally offered for the more serious offences of horse and sheep stealing, burglary, robbery and the sending of threatening letters. The volume of simple larceny indictments, of the kind so characteristic of the criminal business of the Sussex Court of Quarter Sessions, was unlikely to have been greatly affected by financial inducements offered by Prosecuting Societies, bodies of residents, and the like. Nevertheless,

1. SUSSEX WEEKLY ADVERTISER JANUARY 19th 1795.
2. SUSSEX WEEKLY ADVERTISER MARCH 16th 1795.

prosecution was more or less a private enterprise and bodies which actively encouraged prosecution must have been of crucial importance in a system which relied upon the initiative of private individuals. Under such circumstances the system of prosecution cannot have been uniformly regular or consistent and the various inducements to prosecute, or facilitate prosecution, must have played at least some part in the fluctuations that occur in the level of larceny indictments at Quarter Sessions. Perhaps more important than the provision of incentives to prosecute was the removal, during the course of the eighteenth century, of some of the disincentives that may have deterred men of modest means from pursuing a grievance through the courts. A series of Acts of Parliament alleviated some of the expense of prosecution by first, allowing expenses to poorer prosecutors and witnesses in felony cases that resulted in conviction (1) and later to prosecutors and witnesses in felony cases regardless of the outcome. (2) Peel's Criminal Justice Act (3) extended the payment of expenses to cover pre-trial expenses and also included a number of misdemeanours with the felonies for which expenses could be allowed. Such developments must have had a considerable impact on the volume of criminal cases that were brought before the courts but lean, again, towards an explanation of the changes in certain kinds of criminal activity prosecuted in the courts over the longer term. Changes in the propensity of individuals to prosecute simple larceny cases alone are thus unlikely to account for the sudden, short-term and substantial fluctuations in the volume of larceny that occurred during the period investigated, and particularly in the immediate post-war period.

1. 25 GEO II CAP 36/27 GEO II C3
2. 18 GEO III c13
3. 7 GEO IV c64



Thus, it seems clear that the justices in Quarter Sessions, in both Divisions of the County, were dealing with significantly more criminal business by the end of the period investigated than at the beginning. It is also clear that the pattern of relatively gradual increase in the level of larceny was broken during the period 1815 - 1820 by a substantial upturn in the volume of such indictments. Given that the figures for pre-trial larceny indictments reflected in the records of the Court of Quarter Sessions represents an increase in the level of 'real' crime within the community, which seems a fair, though not an unqualified, assumption then several possible contributory factors deserve consideration. Grain prices were undoubtedly of prime importance to the well-being of the rural community, though high grain prices were not necessarily reflected in the level of larceny indictments recorded for the Court of Quarter Sessions during this particular period. Changes in the nature of cases brought before the justices, the propensity of individuals to prosecute rather than settle grievances through 'extra-judicial' measures and even changes in the criminal code may all have had a significant long-term impact on the volume of larceny cases brought before the justices. However, it is more likely that the post-Napoleonic upturn in the volume of larceny was more directly linked to the availability of work during a period characterized by acute agricultural depression, compounded by peculiarly local difficulties, and by fierce competition in the labour market.

Interestingly, although the figures for Quarter Sessions larceny show an unmistakeable upturn during the second decade of the nineteenth century, this upturn is confined almost entirely to instances of male larceny and not female. In his examination of the incidence of female crimes in Surrey and Sussex during the eighteenth century J. M. Beattie has noted

a 'strikingly low level of criminality' with regard to women. (1)

Although certain categories of criminal activity, such as coining, fraud, shop-lifting and thefts from dwelling houses do reveal a greater proportion of female participants, particularly in the urban parishes of Surrey, in general female property crime is substantially lower than male property crime in both counties. The proportion of female to male property offences in Surrey is shown to be substantially higher than in Sussex with an approximate ratio of 1:4 for the former and 1:7 for the latter. For the period as a whole female property crime in rural Sussex accounted for 12.5% of the total, in the rural parishes of Surrey the figure for female property indictments is slightly higher at 14.2% while in Surrey's urban parishes female property crime accounted for a relatively high 28.4% of the total figure. Again, Beattie has based his investigation on indictments laid before both Quarter Sessions and the Assizes Court.

The level of female larceny recorded in the Indictment Books for the period 1775 - 1789 shows female larceny running at 14.52% of the total. (2) The number of women indicted and recorded in the Quarter Sessions pre-trial calendars for the years 1795 - 1805 and 1810 - 1820 also reveals a similar ratio to that found by Beattie. The number of female grand and petty larceny indictments for these years totalled 108, out of an overall figure of 973, which comprise a little over 11%. The number of female grand and petty larceny convictions for these years is in keeping with the ratio of larceny indictments at 83 out of a total of 712, which again is a little over 11% of the total figure. During this period 54 women were convicted for grand larceny offences and 29 were convicted for petty larceny. By way of comparison, 465 men were convicted of the former offence over the same period while 165 men were convicted for the latter.

1. J.M. BEATTIE 'THE CRIMINALITY OF WOMEN IN EIGHTEENTH CENTURY ENGLAND' JOURNAL OF SOCIAL HISTORY. SUMMER 1975 VOL. 8 p 80.

2. Ref Appendix 6 and 7.

In percentage terms female grand larceny convictions account for 10.40% of the total while the figure for female petty larceny convictions is slightly higher at 14.94%.

The entries for the convictions of justices acting out of sessions also reveal a similar level of female appropriation. The petty session cases filed at Quarter Sessions for the periods 1795 - 1805 and 1810 - 1820 show 61 summary convictions for theft. In reality the offences brought before petty sessions were minor misdemeanours and nuisances. Theft here was not indictable as grand or petty larceny, and more often than not merely entailed the taking of wood from 'private' land. Out of the 61 cases of this kind of 'appropriation' recorded in the Quarter Session records only five were ascribed to women, just 8.19% of the total. It should perhaps be noted that the petty session convictions filed at Quarter Sessions are by no means a reliable representation of the work of the justices acting out of sessions. Convictions were not 'filed' on a regular basis and there are gaps in the entries. Nevertheless, there is little reason to suppose that the irregular pattern of petty session entries would have discriminated against women and it seems likely that the low level of female larceny brought before the justices in Quarter Sessions was a fair reflection of female theft generally.

A notable characteristic of female larceny is that it rarely involved goods to a high value. Female theft more usually involved the taking of cloths, sheets, handkerchiefs and the like. Outside the confines of larceny however it does seem that women occasionally participated in crimes of a more enterprising nature. In July 1816 Anne Martin was brought before the Lewes justices together with her sister Elizabeth, charged with circulating counterfeit coins. (1) Both women were found guilty of the offence and given one year's imprisonment by the bench. The manufacture and

1. E. S. R. O QO/EW 42 Lewes July 1816.

circulation of counterfeit coinage in general it seems had a much higher proportion of female participation than larceny, Beattie's Surrey indictments put this at 40.38%, so it is perhaps not surprising to find that the Lewes justices had already heard the case of Catherine Smith, sentenced by the bench to one year's imprisonment for the manufacture of counterfeit coins. (1) Catherine, a widow, had been indicted for the offence along with John Smith, but her alleged associate was acquitted by the Court. Also featured amongst the more serious of female offences, outside larceny, was the case of Sarah Mills and Lydia Bennett, again brought before the Lewes justices and subsequently convicted and imprisoned for the attempted blackmail of a Brighton vicar, Robert James. (2) However, despite such cases, the nature of female crime brought before the justices in Quarter Sessions, was more simple and less enterprising than crimes perpetrated by men. Female larceny more usually involved the taking of 'clothes-line' items and utility goods and was less extensive and less serious than male larceny, tending to be more opportunist and less risk-taking and calculated. (3) Minor misdemeanours such as causing a nuisance or vagrancy show a much higher level of female participation. More importantly, although female larceny does show a very slight increase during the period investigated, external factors such as the prospects for employment, distress through high grain prices and general post-war dislocation appear to have very little, if any, impact of the level on such offences in Sussex.

An analysis of the status of female offenders is a necessary precondition to the study and interpretation of female larceny statistics. If, as seems likely, the more domestically orientated role of women generally precluded

1. E.S.R.O. QO/EW 40 Lewes January 1812.

2. E.S.R.O. QO/EW 41 Lewes July 1814.

3. The Overall Pattern of Male Larceny for 1810 - 1820 is shown in Appendix 8 'Classification of Stolen Goods.'

them from direct competition in the labour market in large numbers, and in a situation where women were the secondary rather than the primary providers, then the lower larceny rate for female offenders may be seen as part of the more passive condition of women in a rural community. Under such circumstances it would follow that the rate of larceny for women would be higher among those outside of marriage. Single women may have found themselves both without male support and unable to compete with men in many fields of legitimate employment. Conversely, it may also be the case that in a system which placed the onus of support and provision on the individual, rather than the state, the incidence of larceny would be higher among married rather than single men, given a patriarchal state of affairs. It is impossible to determine the married status of the vast majority of male offenders from the information provided in the records of the Court of Quarter Sessions, though in the case of women the necessary information is sometimes provided. An examination of the 54 cases of female larceny recorded in the Order Books during the period 1810 - 1820 shows that the majority fell within the categories of 'spinster' or 'single woman'. (1) 31 women offenders were described thus, in percentage terms some 57.4%. On only four occasions was married status specifically ascribed to female offenders. Women described as 'labourers' accounted for a further four offenders while for the remaining 15 female larceny offenders no status at all was recorded. The small and irregular number of female larceny offenders over this period precludes the drawing of unequivocal conclusions, nevertheless, such figures do at least indicate that the single, unmarried woman was more likely to turn to larceny.

In addition to the fact that married women possessed a measure of security not afforded to the single woman, it may also be the case that the law was interpreted to the advantage of the former. Blackstone clearly illustrated

1. Ref. Appendix 7.

this advantage when he described the legal position of women thus:-

'A feme covert shall not be punished for committing any felony in company with her husband; the law supposing she did it by the coercion of her husband. But the bare command of her husband be no excuse for her committing a theft if he was not present; much less is she excused if she commit a theft of her own voluntary act. (1)

If the courts adhered to this principle then the number of larceny convictions for married women would under-represent the level of 'actual' larceny among this group of female offenders. As far as Sussex was concerned however, unless prosecutors generally did not attempt to bring women offenders to justice in the light of this principle, it would appear that the application of such a premise would not have significantly undermined the level of married female larceny offenders. On only two occasions were married women prosecuted for larceny at Quarter Sessions along with their husbands during the period 1810 - 1820. At the Lewes sessions of July 1814 James Self, a labourer from Falmer, and his wife Elizabeth, were prosecuted for theft of clothing to the value of £1. James Self was convicted and sentenced to a term of four months imprisonment whilst Elizabeth was acquitted. (2) At the Petworth sessions of June 1820 William Parker and his wife Anne were brought before the bench accused of the theft of goods to the value of 16/-. Similarly, Anne Parker was acquitted by the Court, but her husband was transported. (3) Although the Court of Quarter Sessions may well have given the benefit of the doubt to female larceny offenders who were criminally associated with their husbands, such leniency does not appear to have extended to other kinds of criminal

1. BLACKSTONE, W Commentaries on the Laws of England  
Vol II (New York 1969)

2. E.S.R.O. QO/EW 41 Lewes 15th July 1814.

3. E.S.R.O. QO/EW 44 Petworth 11th June 1820.

activity. There are numerous examples of women being brought before the justices and convicted, along with spouses, for assault, vagrancy and other misdemeanours.

In explaining the low level of female larceny throughout the period investigated two possibilities seem worthy of investigation. Firstly, women may well have found it more difficult to procure the freedom from social constraint and the freedom to associate than men. The rigid social conventions that applied to women in general may have had their roots in traditional notions of morality but in eighteenth and early nineteenth century society close supervision of women had a firmly pragmatic basis. In an age when bastardy was considered a criminal offence, punishable by imprisonment or whipping or both, and during which overseers of the poor took a dim view of anything that placed an unnecessary burden upon the rates, it would not be surprising to find women under closer scrutiny than men. Indeed, an example of the cautious dubiety with which the single woman was viewed is provided by the case of John Finch and Nicholas Backshells, overseers of the poor from the parish of Ifield, who were brought before the justices in 1786. It seems that these two enterprising overseers conspired to relieve the parish of Ifield of the burden of financial support for Sarah Carston, who may have been expecting a bastard child, for the Quarter Session entry records that they were guilty of:-

... unlawfully and wilfully conspiring together to cause and procure a marriage to be had and solemnised between one John Nash, a poor person legally settled in the parish of Burpham ... and one Sarah Carston, a poor person legally settled in the parish of Ifield and for promising and agreeing with the said John Nash a dinner and also to pay the said John Nash the sum of £2.10s. to marry and take to wife the said Sarah Carston ...

by means of which the said parish of Burpham was put to great trouble and expense in and about the maintenance of the said Sarah Carston. (1)

No doubt the more rigid social constraints placed upon women in rural parishes of Sussex also existed in the more urbanized and more highly populated parishes of Surrey. Nevertheless, it seems likely that women in a close-knit rural setting would find freedom of association and opportunities for independent employment outside a narrow domestic setting less accessible than their urban counterparts. In an urban situation it is likely that women were placed more directly into contact with a wider society and were a more integrated part of the general workforce. The opportunities to engage in the kind of light criminal activity more suited to women, such as stealing from shops or from dwelling houses, would almost certainly have been greater in an urban environment. Such a contention would not only help explain the relatively low level of female crime in rural Sussex but may also explain, at least in part, the higher proportion of female to male larceny found by Beattie in urban parishes of Surrey.

Secondly, if, as suggested, the incidence of larceny bears a close relationship to the vitality of the labour market and if unemployment or underemployment is the major contributory factor in the post-Napoleonic upturn in the level of larceny, it would not be surprising to find a more volatile and responsive larceny rate amongst men, upon whom responsibility for provision largely fell. Women of course were no more cushioned than men against the full effects and consequences of dearth and distress, but they were less likely to be actively engaged in competition within the labour market, their role was more passive and more domestically orientated and the opportunities to engage in property crime in general and larceny

1. QO/EW 9 Indictment Book January 1786.



in particular were far fewer. Such a contention is certainly in keeping with Beattie's conclusion that:-

Despite the obvious difficulties of comparison, it seems clear that women were more likely to commit crimes against the person and against property in the city than in the countryside, and that this derives from vital differences in the circumstances of women's lives in these two settings ... In a rural community paternalistic controls might restrict behaviour, but at the same time they also provided more cushions against adversity and more protections against extreme disaster. (1)

1. Beattie OP CIT P 109.

### CHAPTER 3.

#### DEARTH AND DISORDER

Although a simple correlation between dearth and incidents of larceny in rural Sussex at the end of the eighteenth and the beginning of the nineteenth century does not appear to be an entirely appropriate explanation for the growth in the number of such indictments recorded for Quarter Sessions, it is quite clear that high grain prices were having a significant impact on the rural scene. In fact high grain prices do appear to have served as a stimulus in a complex symbiosis of 'class' interlocation directed, at one end of the social spectrum, at securing the 'charitable donation' or the 'benevolent intervention' on the part of those in authority, whilst at the other, maintaining the fabric of law and order within its fragile rural setting. This symbiosis of inter-class activity most often took the form of the 'popular assembly' and occasionally the outright riot, the response to which was more often than not a mixture of flexibility and compromise, which was occasionally abandoned in favour of the military. It is within this context that the significance of periods of dearth in Sussex will be examined.

There can be little doubt that the high grain prices of the 1790s, which reached their peak during the crisis years of 1795/6 and 1799/1801, both provoked elements of the populace to test the bounds of legitimate expressions of discontent, and created a climate in which the charitable and discerning response to social disorder became as important a weapon in the armoury of the gentry as the more conventional instruments of social control. For these years particularly, the pages of the Sussex Weekly Advertiser contain numerous accounts of popular demonstrations against high grain prices. In April 1795 the Advertiser reported that:-

... at Brightelmstone on Thursday last, being a

market day, about two hundred women and girls assembled before the Inn where the markets are held with a loaf of bread and a steak of beef hoisted of sticks ... to express their meaning that these articles must be lowered in price. (1)

In December 1799 the miller of Southwick provoked the populace of Shoreham, who were undoubtedly suffering from the sharp upturn in the price of cereals since the previous October, by using deficient weights. On the discovery of this act of dishonesty by the parish constables, we are told:-

The populace of Shoreham were so irritated that they exhibited the miller in effigy about the streets and as a further mark of their indignation afterwards made a bonfire and committed the figure to the flames. (2)

Both these episodes were harmless displays of popular discontent and were reported with a degree of sympathy by the Advertiser. However, the journal was not unaware of the gravity of a situation in which short-weighting, by no means an unusual offence, could provoke such a reaction. In April 1800 the Advertiser observed that:-

The continued extravagant price of provisions ... has at length, in different parts of the country, subdued the patience of the suffering peasantry and provoked them to acts of violence, which even the state of the times, however deplorable, cannot justify - to expect good from rioting and commotion is a delusion of the most dangerous tendency ... (3)

1. SUSSEX WEEKLY ADVERTISER 20th April 1795.
2. SUSSEX WEEKLY ADVERTISER 15th September 1800
3. SUSSEX WEEKLY ADVERTISER 6th April 1800.

Throughout the summer of 1800, with a slight abatement in August, grain prices remained very high, and there is possibly a note of alarm in the Advertiser's comment of September:-

The riotous disposition of the lower classes of people ... on account of the extreme high price of almost every necessary article of life, we are concerned to state, has increased to a very alarming degree, and if some speedy and effectual measures are not taken by the government to remove the cause it is greatly to be feared the effects must prove extensively ruinous. (1)

In Sussex the problems created by the high price of grain were further compounded by the arrival of large numbers of militiamen who were to form part of the country's coastal defences. Militiamen were expected to procure their own provisions for which purpose they were furnished with an allowance. Whilst the parish generally afforded a measure of protection against absolute distress to the poor during periods of dearth, militiamen had no such protection - a point made in the wake of the Newhaven militia riots by the Duke of Richmond. (2) The Spring of 1795 saw quite alarming riots occur at both Chichester and Newhaven, with soldiers from the Herefordshire and Oxfordshire Militia respectively playing a leading part. The disturbances at Chichester, as far as the Herefordshires were concerned, were prompted by the non-payment of the bread allowance which, in the face of high grain prices, caused resentment amongst the troops. The soldiers were also joined by a large number of local civilians, who obviously shared with the militiamen a common concern at the high price of provisions. On the 20th April the Advertiser carried an account of the riot, in which it reported:-

1. SUSSEX WEEKLY ADVERTISER 15th September 1800.

2. CLIVE EMSLEY BRITISH SOCIETY AND THE FRENCH WARS 1793 - 1815 MACMILLAN (1979) p 42.

... in consequence of an inflammatory hand-bill, which had been very generally circulated throughout Chichester, and the neighbouring villages, a considerable body of the lower orders of people assembled in that city, for the purpose, as they declared, of lowering the price of provisions. These people were instantly joined by a great number of people belonging to the Hereford Militia ... (1)

After liberating several soldiers who had been confined for stealing bread the assembled crowd, we are told:-

... proceeded to several acts of violence, both within the city, and in a neighbouring village: they disposed of meat, bread, etc. at prices (they) themselves thought proper to affix, and afterwards demolished most of the windows of the Dolphin Inn ... (2)

The disturbances at Seaford and Newhaven appear to have involved only men from the Oxfordshire Militia and, here again, it was the price of provisions that prompted the riots. With fixed bayonets militiamen 'assembled in a number of about five hundred' and marched to Seaford where they 'seized all the flour, bread and meat they could find and sold it at reduced prices'.<sup>(3)</sup> The soldiers also seized upward of two hundred sacks of flour from a mill near Bishopstone and eventually made their way to Newhaven, where they 'took possession of the town and helped themselves to whatever they thought proper'.<sup>(4)</sup> The Oxfordshire's insurrection eventually ended as a drunken and disorganized affair and order was restored relatively easily the next

1. SUSSEX WEEKLY ADVERTISER 20th APRIL 1795.
2. SUSSEX WEEKLY ADVERTISER IBID.
3. SUSSEX WEEKLY ADVERTISER IBID.
4. SUSSEX WEEKLY ADVERTISER IBID.

morning, with the aid of the Lancashire Fencibles and some of the Horse Artillery stationed at Brighton.

Thus, although the impact of dearth on the level of larceny in Sussex during this particular period remains at best uncertain, it is most certainly the case that high grain prices provoked fierce popular reaction. If these numerous reports of 'riotous assemblies', which appear in the pages of the Advertiser, can be taken as a fair indication of the level of popular discontent at high cereal prices, then Sussex's rural community was not passively accepting such conditions. Yet for all the many accounts of riots and popular demonstrations, few of the participants in such activities were ever brought before the justices in Quarter Sessions. In fact it seems as if the criminal business of the court, during the crisis years of the 1790s continued in much the same way as ever, regardless of the level of social discontent within the County. It is sometimes difficult, using the scant case descriptions that often accompany convictions for 'riot', to distinguish between the true dearth inspired disturbances and acts of defiance perpetrated for other reasons, such as inadequate rates of pay or objections to the policy of a particular group of parish overseers. The nomenclature used by the court to categorise these collective 'social' acts, such as 'riotous assembly', 'unlawful conspiracy' and even 'trespass' is also of little help since the application of these terms to a particular offender or group of offenders follows no consistent and rigid criteria. However, taking convictions for what will be termed, for convenience, 'collective acts', which include 'riots', 'conspiracies' and 'assemblies' relating to either dearth, pay or some other genuine social grievance, 44 such convictions are recorded for the periods 1775 - 1790, 1795 - 1805 and 1810 - 1820. The 13 convictions for the earlier period do appear to be the result of 'riot' in the sense of an unrestrained or partially restrained disturbance of the peace. This is also true of the convictions for the period 1795 - 1800, during which time a total of 16 offenders were brought up and convicted for 'riot' - which is by far the largest number for such a short period. However, a number of those convicted for 'collective acts' after 1800 were found guilty of partaking in subversive 'union' activity.

Thus, even allowing for the widest possible interpretation of the term 'riot', very few such convictions were recorded for the Sussex Court of Quarter Sessions during the period investigated. No convictions for 'riot' or related offences appear in the files for petty session convictions, apart from 10 for 'smuggling', which under certain circumstances could be tantamount to a 'riotous assembly'. Even the figures for 'riotous assembly' are inflated by convictions for acts which bear no direct relationship to the classic eighteenth century price riot.

In common with other coastal counties, Sussex had a relatively strong fishing industry, and the Government's need for skilled seamen, particularly during the French Revolutionary and Napoleonic Wars, provided at least one other cause of possible discontent between the authorities and the local community. Thomas Spry, a Lieutenant in the Navy, found an angry reaction in the coastal town of Littlehampton when he tried forcibly to impress Charles Mellish, a local fisherman, into naval service. The Quarter Session Order Books record:-

... His Majesty's Order in Council dated 20th April 1803 did empower and direct the said Thomas Spry to impress so many seafaring men and persons whose occupations and callings were to work in vessels and boats ... in order to serve on board His Majesty's ships ... the said Thomas Spry being so empowered ... did impress one Charles Mellish ... the jurors do present that diverse and disorderly persons to the number of thirty or more whose names to the jurors are as yet unknown ... whilst the said Thomas Spry so had the said Charles Mellish in his custody ... with force and arms unlawfully, riotously

and tumultously did assemble and gather themselves together to break and disturb the peace and by means of threats of harm and violence to the person and dwellinghouse of the said Thomas Spry did cause and procure the said Thomas Spry to liberate and discharge the said Charles Mellish. (1)

Such an assembly was fuelled by a very different grievance than that of the grain price riots of the 1790s, though it is perhaps as well to acknowledge E. P. Thompson's contention that most eighteenth century crowd action had as a common basis certain 'legitimizing notions' of common right established by custom or tradition. (2) Similarly, a number of convictions for 'riotous assembly' also appear to have arisen out of offences against the game laws, as in the case of seven men convicted of 'riotous assembly' in July 1798. Again, the Quarter Sessions records reveal that these seven rioters:-

... did unlawfully conspire, combine and confederate together by force and violence to support and protect each other in the commission of diverse trespasses in hunting, shooting and destroying game ... and in pursuance of the conspiracy ... unlawfully did meet and assemble together to consult of the means of carrying their conspiracy into effect and did then and there procure themselves to be armed with diverse dangerous and offensive weapons ... for the purpose of making resistance. (3)

The distillation of the Quarter Sessions riot convictions reveals the extent

1. E. S. R. O. QO/EW 36 MIDHURST 10th APRIL 1804.
2. E. P. THOMPSON 'THE MORAL ECONOMY OF THE ENGLISH CROWD IN THE EIGHTEENTH CENTURY' PAST AND PRESENT No. 50 FEB 1971.
3. E. S. R. O. QO/EW 33 CHICHESTER 10th JULY 1798.



to which the genuine dearth - related protest is under-represented in the level of such convictions. Although there can be little doubt that popular protests against grain prices were by no means an uncommon feature of the rural scene, particularly during the crisis years of the 1790s, few such protesters were brought before the bench and convicted of 'riotous assembly'.

The circumspection and flexibility with which the local magistracy appears to have applied the law to popular assemblies directed at grain prices or dearth lends ample support to E. P. Thompson's observation that 'the rulers of England showed in practice a surprising degree of licence towards the turbulence of the crowds'. (1) It is tempting to see Thompson's 'structural reciprocity' operating in the magistracy's relations with the crowd within this specifically local context, but this perhaps raises to a calculated, conscious level something which, given prevailing conditions of the period, was instinctive common sense. It is possible that the individual magistrate very often found himself with little choice but to offer a potentially rowdy mob a timely concession. Equally, it is hard to imagine a situation in which a small group of rural labourers could not gain more by enlisting the support of the magistracy one way or another than by acting without regard to the impression that would be created amongst local gentry. In February 1800 the Advertiser reported that:-

Last Saturday about forty poor men, and men of tillage, came in a body, but peaceably, from the parish of Barcombe, to a sitting magistrate in this town (Lewes) with a sort of petition stating their grievances and praying an order for their necessary allowance of flour from the parish at one shilling per gallon. The magistrate paid them proper attention, and recommended instead

1. E. P. THOMPSON 'PATRICIAN SOCIETY, PLEBIAN CULTURE'.  
JOURNAL OF SOCIAL HISTORY, VII (1973-4) p 402.

of flour that meat and other substitutes should be provided for them at reduced prices which, with an order on the parish for the payment of one shilling to each man for his loss of time and attendance, encouraged them to return cheerfully and well satisfied to their respective homes. (1)

Again, on the 24th February, upward of fifty labourers assembled at Petworth and, we are told:-

Complained to the magistrate of that district that in consequence of the excessive price of bread and provisions they and their families were in a state bordering upon starvation notwithstanding their utmost industry to support them. Sir Godfrey Webster, who was on a visit to the Earl of Egremont's, after patiently hearing the men's complaints, sent summonses to the officers of the parishes from whence the labourers had assembled ordering their attendance before the magistrates at the next bench day, after which the men quietly returned to their respective homes. (2)

Although it is perhaps unwise to view the militia disturbances of 1795 in exactly the same light as the labourers petition to the local magistrate, in both instances the timely concession was certainly important. After the

1. SUSSEX WEEKLY ADVERTISER 2nd FEBRUARY 1800.
2. SUSSEX WEEKLY ADVERTISER 24th FEBRUARY 1800.

Herefordshire's rampages through Chichester the Duke of Richmond, then the General commanding the southern district, arranged to meet the military discontents. The Advertiser reported that:-

The militiamen complained, not only of the high price of provisions, but also of the Bread Money having been withheld from them. The above noble Duke, we understand, commended them for making their grievances known, and promised them speedy redress: and the liberality of the citizens completely done away with the former ... (1)

In the aftermath of the Newhaven riots, which appear to have been viewed with rather less toleration, twenty one prisoners were taken and thirteen men were later court-martialled. (2) However, even here a measure of inducement was offered to the men since, we are told:-

Soon after the regiment has commenced its violences at Seaford, Captain Harben obtained a hearing and forcibly exhorted the men to return to their duty, at the same time assuring them that he would purchase ten loads of wheat and retail it to them at four pounds a load less than it cost him, for which they gave him three cheers, and the majority seemed inclined to disperse, but some, the more desperate and disaffected, objected ... (3)

The identification of the militia with more widespread popular grievances which followed in the wake of the 'exceptionally severe' winter of 1794/5

1. SUSSEX WEEKLY ADVERTISER 20th APRIL 1796.
2. CLIVE EMSLEY OP CIT IBID
3. SUSSEX WEEKLY ADVERTISER. IBID

said to have been 'the coldest on record' (1) was a most disturbing feature of the Sussex riots for the authorities. The militia was at least one potential agency of crowd control and in a situation where both military and civil disturbances occurred side by side, and in the case of the Chichester riots, together, it is hardly surprising to find the Duke of Richmond prompting the government to speedily 'remedy the militiamen's major grievance'. (2) As a buffer against further price increases, which seemed inevitable as the severe winter gave way to a very late, cold, spring and early summer, the allowances for bread and meat were replaced by rations on the 18th April and the 25th April respectively. (3)

On these occasions collective action, to a greater or lesser degree, formed the basis of a platform for negotiation between the authorities and the crowd. It is a matter for speculation as to the extent to which the potential for real disorder and aggressive action existed, but given the fact that outbreaks of disorder did occasionally occur and that convictions for 'riot' were occasionally recorded at Quarter Sessions, it seems reasonable to assume that the risk of such gatherings degenerating into a 'riotous assembly' was always to an extent present especially where militiamen were involved. Again, there seems to be some justification, on a local level, for Thompson's observation that:-

... the crowd lost its head as often as the magistrates did. But the interesting point is that neither side did this often. So far from being 'blind' the crowd was often disciplined, had clear objectives, knew how to negotiate with authority, and above all brought its strength swiftly to bear. (4)

1. Stratton J.M. Agricultural Records John Baker 1978 (2nd ed) p 91.
2. Wells R. 'The Militia Mutinies of 1795' in John Rule (Ed) Outside the Law: Studies in Crime and Order 1650 - 1850 (University of Exeter 1982) P5
3. Wells R. Op Cit ibid
4. E. P. THOMPSON OP CIT IBID

Apart from the fact that the magistracy appears to have shown a degree of licence towards the crowd another factor may have served to reduce the impact of dearth on the criminal work of the justices in Quarter Sessions. Whether or not there exists a significant difference, in terms of the level of certain kinds of criminal activity, between 'Speenhamland' and 'Non-Speenhamland' counties is beyond the scope of this investigation. For convenience, a 'Speenhamland' county may be defined, in the words of the 1824 Committee on Labourer's Wages, as one 'found to be making use of the principle of supplementing earned wages'. (1) Given the complexity and sheer variety of possible stimuli to crime it is impossible to determine with any degree of accuracy the extent to which a system of 'formal' poor relief could serve to alleviate the necessity to engage in larceny or some other offence. What can be said is that Sussex was a notoriously high spending poor relief county and that in addition, during periods of dearth, the formal system of relief was supplemented by informal charity, spasmodic and disorganised though it might have been. The pages of the Advertiser provide many examples of benevolent intervention on the part of local farmers on behalf of the poor. In June 1800 it was reported that:-

The farmers of Bexhill ... have resolved that no one among their body shall sell to their own millers any wheat for more than £30. per load, by which agreement the poor of that parish will not be obliged to pay more than two shillings and sixpence per gallon for their flour. (2)

1. OTHERS WERE BEDS., BERKS., BUCKS., CAMBS., DEVON,  
DORSET, ESSEX, HANTS., LEICESTER, NORFOLK, NORTHANTS.,  
NOTTS., OXFORD, SUFFOLK, SUSSEX, WARWICK, WILTS., AND  
THE EAST AND NORTH RIDINGS OF YORKS.

J.D. MARSHALL THE OLD POOR LAW 1795 - 1834

STUDIES IN ECONOMIC HISTORY MACMILLAN 1968. p 19.

2. SUSSEX WEEKLY ADVERTISER 30th JUNE 1800.

In December 1800 we learn that:-

Mr Bishopp, a farmer at West Burton ...  
distributed to the poor of the neighbourhood  
two loads of wheat and joints of mutton, for  
which purpose he caused three of his fatted  
sheep to be killed. (1)

During the same month one Mr Whatley:-

... caused a bullock to be slaughtered  
on Christmas day and distributed the  
beef to all the poor of the neighbourhood. (2)

Lest we assume that Whatley's generosity be confined to Christmas day  
only the Advertiser noted:-

Mr Whatley constantly supplies all his  
labourers with wheat, cheese and new  
milk for the use of their families at a  
very reduced rate, and allows them to  
plant potatoes on portions of his lands  
without any compensation whatsoever. (3)

It is certainly not suggested that the formal system of poor relief which  
operated within the County at the end of the eighteenth and beginning of  
the nineteenth century, together with informal charity, was sufficient to  
remove 'the dread of scarcity' from rural Sussex. Nor is it suggested  
that the benevolent interventions of farmers and gentry amounted to any-  
thing like the exercising of full 'paternalist' responsibilities in the

1. SUSSEX WEEKLY ADVERTISER 29th DECEMBER 1800.
2. SUSSEX WEEKLY ADVERTISER 29th DECEMBER 1800.
3. SUSSEX WEEKLY ADVERTISER OP CIT IBID

traditional sense. It is also true that care should be taken when explaining such acts in altruistic terms since, as Thompson notes, such acts of benevolence cannot be entirely disassociated from the more practical considerations of the maintenance of order and social control. As Thompson explains:-

The theatre of the great depended not upon constant, day-by-day attention to responsibilities, but upon occasional dramatic interventions: the roasted ox, the prizes offered for some race or sport, the liberal donation to charity in time of dearth, the application for mercy, the proclamation against forestallers ... such gestures were calculated to receive in return a deference quite disproportionate to the outlay. (1)

Nevertheless, it may well have been the case that informal charity, together with the adoption of a Speenhamland type policy of wage supplements in the last decade of the 18th century, to some extent relieved the most acute consequences of high grain prices, thereby rendering this kind of distress a less poignant stimulus to crime. The Advertiser was in little doubt as to the relationship between depravation and crime. During the grain price crisis of 1795 the journal observed that:-

No less than eight robberies have been lately committed in the little parishes of Warbleton and Heathfield ... and it is a fact for serious reflection that the stolen property consisted wholly of articles of food, namely wheat, pease, oats and sheep, to which it is not impossible but hunger, hard pressed by the

1. E.P. THOMPSON op cit p 390

necessity of the times, might have pointed her finger, regardless of the dangers that must always attend so desperate and delusive an index. (1)

If the Advertiser was sure of the cause of these deprivations it was equally certain as to the remedy that should be adopted, for the journal continues:-

The subscriptions now on foot in different parts of the country for the purpose of raising funds to supply the necessitous and industrious poor with corn at prices proportionate to their earnings, are much better calculated to prevent the commission of crimes like these above stated, than the dread of punishment. (2)

The 'collective acts' so frequently recorded for the 1790s can certainly be seen as providing an important stimulus to those in authority to sharpen the discretionary instruments of charitable intervention. Again to quote Thompson:-

... a disposition to riot was certainly effective as a signal to the rich to put the machinery of parish relief and charity - subsidized corn and bread for the poor - into good repair. (3)

Thus informal charity may also have served, in much the same way as the positive response to the labourers' deferential petition, to prevent the total alienation of the farming fraternity from its dependent labour force. Within

1. Sussex Weekly Advertiser 12th January 1795.
2. SUSSEX WEEKLY ADVERTISER op cit 1810
3. E. P. THOMPSON 'THE MORAL ECONOMY ...' p 124.



this context too, some acknowledgement should be made of Thompson's contention that the local landed were careful to disassociate themselves from any direct responsibility for prevailing social and economic conditions, and to ensure that 'when the price of food rose, the popular rage fell not upon the landowners but upon middlemen, forestallers and millers'. (1) The Advertiser was careful to point out, when the occasion warranted, that farmers were not hoarding corn for profit but out of prudence:-

... Many of the best parishes for the growth of wheat in Sussex have scarcely a load remaining, and but for the prudence and foresight of a few opulent farmers, who purposely kept their ricks unthrashed till very lately, many of our mills would at this time be without grist. (2)

In December 1800, a month during which the minimum price of wheat at Lewes averaged 130/- per quarter, the Advertiser turned its attention to the 'jobbers' and 'monopolisers' and proclaimed:-

... these jobbers are the agents of the monopolisers, who are the promoters if not the creators of the scarcity, and whose acrimonious views will know no bounds, as we have repeatedly stated, until they are stopped by a rigid maximum. Some of our farmers have we hear, and we mention it to their credit, formed a resolution of shutting their books totally against jobbers. (3)

1. E.P. THOMPSON 'PATRICIAN SOCIETY ...' p 388.
2. SUSSEX WEEKLY ADVERTISER. 22nd JUNE 1795.
3. SUSSEX WEEKLY ADVERTISER. 15th DECEMBER 1800.

Thus, to conclude, it was undoubtedly the case that high grain prices provoked a quite significant popular reaction. It was also the case that very few of those who participated in 'collective acts of defiance' inspired by dearth were brought before the justices in Quarter Sessions. Further, it does not appear to be the case that high grain prices drove people to larceny in numbers that would have made a significant impact on the general pattern of this kind of crime. It is possible that popular demonstrations, far from being perceived by those in authority as a serious threat to stability and order, were part of that 'well established eighteenth century tradition' recognized by R. B. Rose. (1) Such a contention does of course warrant some qualification. Accepted though popular demonstrations might have been, such leniency did not extend to those who posed a real threat to property and to those who engaged in subversive protest. The anonymous letter which threatened life, property or livestock or demanded money or any other 'valuable thing' carried with it the risk of capital punishment. (2) It is often within the pages of such letters, written without the constraints that would have gone hand in hand with most public protests, that the less deferential side of collective action is revealed. In March 1800 the Advertiser published the full text of a letter 'from the poor of Southover' in the hope of tracing the authors, it ran:-

We the poor of the parish take manor of  
acquainting the Overseers that if they do  
not redress our complaints they may expect  
the first opportunity that we will make them  
examples of misery and as for Pesket, his  
worse than you sur a poor proud fellow and  
he may soon expect a rap over his pate,

1. R. B. ROSE PRICE RIOTS AND PUBLIC POLICY IN EIGHTEENTH CENTURY ENGLAND INTERNATIONAL HISTORY REVIEW VOL 6 1961.
2. BY 9 GEO I c22 (1723) - BLACK ACT: AND BY 27 GEO II c15 (1754).

we will serve you as some have been served  
in France. The time we hope is not far off  
when it will be in our power to do such  
opresors. Take this warning from the poor  
of Southover. (1)

Often such letters found their way into the pages of the London Gazette together with a reward for information leading to the authors. (2) Thus protest was tolerated, but not to a degree which allowed it to pose a serious threat to social stability. It seems to have been well understood on both sides that 'collective behaviour' on the part of the poor was more likely to achieve its objectives if it was open, overt and preferably responsive to the initiatives of the gentry. It seems that even within the context of collective protest deference had an important place.

Finally, quite apart from any formal system of poor relief that operated during the crisis years of the 1790s, informal charity may have been sufficient to alleviate the worst features of dearth in certain areas. In addition to the individual acts of benevolence and local resolutions to cut the consumption of bread or flour, various methods of providing cheaper essential foodstuffs for the poor were implemented during dearth years. In January 1795 the Advertiser reported:-

In consideration of the present severe weather  
the inhabitants of Horsham have entered into a  
very liberal subscription for supplying their  
distressed neighbours with flour at 5/- per  
bushel or 7½d per gallon ... the present retail  
price of flour at Horsham is 15d per gallon.

A subscription has also been entered into at

1. SUSSEX WEEKLY ADVERTISER 16th MARCH 1800.

2. E.P. THOMPSON THE CRIME OF ANONYMITY in DOUGLAS  
HAY ET AL ALBION'S FATAL TREE PENGUIN 1977.

Rye for the same laudable purpose ... would  
to God such charities were not only general in  
small towns but also in country parishes. (1)

The extent to which the severe winter of 1794/5 precipitated the establishment of 'subscriptions' to alleviate the plight of the 'necessitous and industrious' poor is again revealed in the pages of the Advertiser. For the first three months of 1795 alone voluntary subscriptions were provided by the inhabitants of Arundel, Battle, Brighton, Buxted, Chichester, Crawley, Cuckfield, Eastbourne, East Grinstead, Godstone, Heathfield, Henfield, Horsham, Hurstpierpoint, Lewes, Littlehampton, Mayfield, Mountfield, Petworth, Pulborough, Rye, Steyning, Tonbridge Wells, Thakeham, Uckfield, Warbleton and Wilmington. This in addition to the numerous notable individuals who were also applauded by the Advertiser for their generosity. The Earl of Egremont provided 'nine fat oxen and a proportionate quantity of bread' for the poor of Petworth and neighbouring parishes and added another £100 to the inhabitant's subscription. The Duke of Richmond was reported as having 'entertained the poor at Goodwood; providing them with 'dinner and mince pie'. Thomas Kemp Esq provided the poor with 'rich pea soup once a week until the end of winter'. The Duke of Norfolk added £30 to the Arundel subscription and a further £20 to the Horsham fund. Sir Robert Clayton had 'three fat beasts slaughtered' whilst Sir John Bridger and Lord Pelham supplied various parishes with 'coals' for the poor. The general preference for subscriptions over other types of charity, such as the outright donation of goods of various kinds, arose out of a concern to promote 'industry' and discourage 'idleness', a theme which underlies eighteenth century legislation against poaching and vagrancy. The Advertiser proclaimed that 'the mode of selling, though at ever so easy a rate, is a spur to industry, whilst the donation of a days food, has, too often, a direct contrary tendency'. (2)

1. SUSSEX WEEKLY ADVERTISER 19th JANUARY 1795.

2. SUSSEX WEEKLY ADVERTISER 19th JANUARY 1795.

Similarly, in the absence of a government enforced maximum, both farmers and on occasions corn buyers, attempted to introduce some measure of price control during periods of high prices. Again in 1795 it is reported:-

The several corn buyers resident in the town and neighbourhood of Arundel had a meeting ... pursuant to a requisition from the Mayor, for the purpose of adopting some resolutions relative to the present high price of wheat, where an agreement was unanimously entered into not to purchase at a higher price than fourteen pounds per load for three months ... the merchants also agreed to cease buying entirely for one month, and to enforce these agreements they have mutually bound themselves in the penalty of one hundred pounds to be applied towards the relief of the poor. (1)

The numerous accounts of charitable donations that filled the columns of the Advertiser during the crisis years of 1795/6 and 1800/1 stand in marked contrast to the impoverished accounts of less arduous years. In the Spring of 1797 for example, accounts of charitable donations were almost entirely confined to the annual Christmas bounties distributed by certain notable gentlemen regardless of pressures on the poor. In January 1797 the Advertiser reported <sup>that</sup> John Pelham Esq, Parliamentary Representative for Lewes, distributed bread and coal only 'to such of his friends as polled in his interest at the late election'. The Advertiser commented:-

... sorry we are to say, that it was applied for, and accepted by some, who it is well known possess property which should enable them to give to, rather

1. SUSSEX WEEKLY ADVERTISER 20th APRIL 1795.

than take from, those who actually stand in  
need of such relief. (1)

An informal system of charity or voluntary price control which only came into effect during periods of dearth had undoubted advantages, for those who would have to foot the bill, over a more permanent, widespread method of alleviating distress. It was selective, could be withdrawn when the crisis passed, it did not add to the work of local parish officers nor did it set any precedents or add to the costs of the formal system of poor relief. Informal charity also enhanced the position of those who were able to provide it. Perhaps more importantly, informal charity was more than purely symbolic and did serve to some degree to alleviate distress. Under such circumstances higher grain prices may not have been such a powerful stimulus to crime in Sussex as in other parts of the country. That the potential for public disorder existed during periods of high prices there can be little doubt. Equally, there can be little doubt that the high price of provisions was perceived by many to be at least as much a threat to civil order as the influence of 'plebeian democrats' and the writings of 'radical' thinkers. In January 1795 the Advertiser warned:-

Discontent among the people and disobedience to our laws are more to be apprehended from the present exorbitant price of provisions, and other necessary articles of life, kept up by the gripe of monopoly, artifice and taxation, than from French liberty, and the levelling doctrines of Thomas Paine, for should insurrection (which God forbid) ever take place in this Country, it will be attributable to the wrongs, and not to the Rights of Man. (2)

1. SUSSEX WEEKLY ADVERTISER 15th JANUARY 1797.
2. SUSSEX WEEKLY ADVERTISER 12th JANUARY 1795.

## CHAPTER 4.

### THE GAME LAWS.

The analysis and interpretation of statistics arising out of convictions under the numerous and complex series of statutes which together make up the 'Game Laws' is subject to the special limitations imposed by the nature of the documentary material available. The vast majority of game law convictions, 380 out of the total of 400 for the periods 1795 - 1805 and 1810 - 1820, were the result of the summary proceedings of the justices acting out of sessions. Thus, unlike the Quarter Sessions convictions for larceny, which were faithfully recorded by the clerk of the peace in the session records, most game law convictions are to be found among those cases which were 'filed' at Quarter Sessions after being heard by the justices acting in Petty Sessions. It seems reasonable to assume that the filing of petty session convictions was subject to the same irregularity and spasmodic enthusiasm that characterizes so much of the work of the magistracy, especially in the light of the fact that before the Night Poaching Act of 1770 there was no real legal obligation for justices to 'file' their Petty Session 'game' convictions. (1) The necessity of using Petty Session convictions based upon Quarter Session records to define, in statistical terms, the extent to which offences against the game laws featured as a criminal offence in Sussex restricts a fully comprehensive analysis in yet another way. Even assuming that, after 1770, the channel of communication between Petty Sessions and Quarter Sessions was reliable enough to allow us to proceed with confidence in our game laws statistics the fact remains it was only convictions that were filed. It is impossible to determine with an acceptable degree of accuracy the number of people brought before the justices and either acquitted or dealt with extra-judicially. Nevertheless, despite such limitations, it is

1. 10 GEO III c19 (1770); 24 GEO III c43 (1784);  
13 GEO III c80 (1773) and 16 GEO III c30 (1786)

ALL SPECIFICALLY REQUIRED THAT CONVICTIONS UNDER  
THESE STATUTES BE FILED at Quarter Sessions.

certainly the case that the game laws and related statutes accounted for an increasing number of offenders being brought before the individual justices, and that by the second decade of the nineteenth century criminal business related to this kind of offence dominated the list of Petty Session crimes. In addition, though the figures presented by no means reflect accurately the level of offences against the game laws during the periods investigated, the convictions filed at Quarter Sessions are numerous and regular enough to provide at least some indication as to the operation and implementation of the game laws in Sussex.

The complex and accumulative mass of legislation relating to game must have presented a daunting prospect to contemporaries, not least because the introduction of numerous statutes dealing with this question was accompanied by a corresponding reluctance, on the part of the Legislature, to repeal Game Acts when they were superseded. As a consequence game law legislation became a 'legal thicket' in which it was very easy to get lost! (1) On the subject of statutes relating to game John Burn wrote:-

The statutes relating to this title are very numerous and the sense sometimes a little perplexed, so that upon a view of the whole, it may seem, that about four or five new acts, comprehending the several heads here undermentioned, and repealing all preceding ones, would conduce to render this branch of our law more intelligible and useful. (2)

If the 'legal thicket' of eighteenth century game legislation is perplexing its overall intention was very clear. The game laws were introduced with the sole purpose of protecting and preserving the monopoly of the landed

1. P.B. MUNSCHÉ GENTLEMEN AND POACHERS. THE ENGLISH GAME LAWS 1671-1831. C.U.P. 1981 p8.

2. BURN JOHN. THE JUSTICE OF THE PEACE AND PARISH OFFICER. (19th EDT) Vol II LONDON 1800 p389.



gentry over all kinds of game. How this was achieved, and the various legal devices that were introduced to regularize and make effective this absolute monopoly, not only forms the basis of eighteenth century game legislation, but also brings to bear other branches of the law onto the vexed question of game.

The foundation of eighteenth century game legislation was provided by the Game Act of 1671. (1) The basic qualifications for the right to hunt game laid down in this act remained, for the most part, unaltered, until 1831.

The principal game qualification was the holding of a freehold estate, the minimum income from which had to be no less than £100 per annum.

Leaseholders and Copyholders of estates with an income of £150 per annum also, in general, qualified under the game laws, as did 'sons or heirs apparent of persons of higher degree' and the holders of a franchise over a park, chase or free warren. The Act of 1671 effectively ended in law the Crown's unique and special claim over game by putting the gentry on a more or less equal footing. Though individuals could still kill game by virtue of the King's writ alone, a power that was not conferred upon the gentry, even this prerogative was temporary since in 1707 it too was removed. (2) The Act also allowed persons 'not under the degree of esquire' to appoint game-keepers. Those who did not qualify under the Game Act but who were found to be in breach of the law were subject to a fine of 20/- (increased to £5 in 1707) for every head of game killed, or a term of three months imprisonment. The Act also authorised the confiscation of dogs, nets and other 'engines' used in the 'destruction of game' and thereby sought to deprive the unqualified of the means to hunt.

The 1671 Game Act referred in the main to the hunting or killing of hares, partridges, pheasants and moor fowl. Deer were not made the subject of

1. 22 and 23 CHAS II c25.

2. 5 ANNE c14.

the provisions of the Act, and in 1692 rabbits were excluded from the list of those animals to whom the provisions of the Game Act applied. (1) This enactment illustrates one of the basic difficulties encountered by the gentry in their legal quest to protect game from the majority of the population. As the property qualification, during the course of the eighteenth century, became the subject of increasing hostility, especially in the face of developing industrial and commercial wealth, the temptation was to provide a more absolute rationale by making game the property of the person on whose land the animals were actually found. Such a situation may well have been more easily justified, and therefore most easily sustained, than the various Game Acts which provided hunting rights over the few animals which, in the strictest sense, had no rightful owner. Rabbits and deer, presumably because the former were so easily accessible and the latter so valuable, were placed upon such a footing by the legislature. As a consequence a 'game poacher' risked the likelihood of a £5 fine or a short term of imprisonment whilst the 'deer stealer' risked transportation for a felony. However, part of the value of 'game' was its importance in providing sport. The right to hunt freely was the very essence of game legislation and to make all game 'property' in the same way as deer would most certainly threaten the free hunting tradition of the privileged. The development of 'enclosures' for the preservation and rearing of game for sport, especially popular from the mid-eighteenth century, by virtue of which animals gained the legal status of 'property', also brought mixed blessings, not least because the laws against the misappropriation of property applied to both qualified and unqualified alike and ran counter to the notion of a cohesive 'class-based' privilege.

The special status of deer, and more importantly rabbits, is a significant factor in a more broadly based investigation of 'poaching' within a

1. 3 and 4 WM AND MARY, C10.

particular county since offenders engaging in the destruction of <sup>these</sup> animals are more likely to be found amongst those brought up for grand larceny. In 1811 James Stenning, a labourer from Kirdford, was brought before the justices in Quarter Sessions to answer a charge of grand larceny, involving the theft of rabbits to the value of 2/-. (1) Stenning was acquitted but James Fenner, a shoemaker from Lewes, was not quite so fortunate when he found himself before the Lewes justices in 1813 for the theft of five rabbits valued at 2/6. Fenner was fined 1/- and imprisoned for one month. (2) Thus the figures for game exclude a number of offenders who to all intents and purposes were guilty of poaching in exactly the same way as someone who killed a hare, but by the letter of the law one would be punished under the laws of larceny for theft and the other under the Game Laws for poaching.

During the course of the eighteenth century the game code was gradually extended and modified but the provisions laid down by the Game Act of 1671 remained at the heart of the Game Laws. A more detailed resumé of eighteenth century game legislation is available elsewhere (3), suffice it to say that under the provisions of various enactments the gentry were afforded a much wider degree of discretionary power as prosecutors. Acts which enabled gentlemen to proceed against poachers by means of a civil prosecution (4), and which laid down penalties for failing to take out a licence to kill game and for poaching by night (5) all served to furnish the potential prosecutor with wide armory of laws under which offenders could be brought to account. In consequence, the range of punishments that could

1. E.S.R.O. QO/EW 40 PETWORTH 23 APRIL 1811.

2. E.S.R.O. QO/EW 41 LEWES 16 JULY 1813.

3. P.B. Munsche OP CIT IBID.

4. 8 GEO I c19.

5. 10 GEO III c19; 57 GEO III c55;  
56 GEO III c130; 57 GEO III c90.

be brought to bear extended from a relatively small fine to, under certain circumstances, transportation. In addition the Court of Quarter Sessions could itself, after 1800, punish poaching gangs, defined as two or more poachers working together, under the Vagrant Act of 1744. (1) This permitted poachers to be pressed into the services or confined to hard labour for up to two years. The penalties allowed under Acts other than the Game Act of 1671 could not, in general, be imposed by virtue of a summary trial.

The 'Game Laws' then, comprised a complex series of statutes designed to preserve the gentry's exclusive right to hunt and kill game. The legislation introduced during the eighteenth century to supplement the Game Act of 1671 did not necessarily lead to a greater degree of severity in the application of game legislation, rather, these new statutes provided gentlemen with wider discretionary powers of prosecution, and allowed the Courts to administer a much wider variety of punishments, as and when they saw fit. If the notion of equality before the law could be sustained in other branches of the civil and criminal code, it certainly could not in the case of the game laws. The diathesis of such legislation rested upon the foundation of landed wealth alone. Of the old game code P.B. Munsche writes:-

... it was class legislation. The actions which it punished were crimes only because of the social class of the offender, not because hunting or possessing game were in themselves dangerous or offensive to society. (2)

It seems reasonable to suppose that the game laws would not have had the same level of general support as other branches of legislation and it is

1. 17 GEO II c5.

2. P.B. MUNSCHE OP CIT p21.

evident that opposition to them was not confined to the common labourer, upon whom the brunt of these statutes appears to have fallen in practice.

Douglas Hay notes:-

The unanimity of the propertied on the subject of poachers broke down when other effects of the game laws were considered. Pamphleteers for the 'monied interest' ridiculed a situation in which little country squires could shoot at will but men with £100,000 in funds were barred. Farmers protested against the despotism which allowed gentlemen to flatten their crops in pursuit of hares, but forbade yeomen even to buy them. (1)

Criticism of such statutes, which not only excluded the vast majority of the population from hunting, but also from owning a gun or keeping a lurcher, was quite powerfully focused upon the time-honoured notion of 'common right'. Such a criticism was also commonly levelled at the imposition of enclosures which must have been seen by many as concomitant with game legislation. Judge Edward Christian lamented:-

Every magistrate knows that it is the common defence of the poacher, that it is very hard that he should be punished for taking what he had a good a right to as any other man. (2)

To those who criticised the game laws on this basis Burn explained the principle upon which such legislation was founded thus:-

It is a maxim of the common law that such goods

1. DOUGLAS HAY 'POACHING AND THE GAME LAWS ON CANNOCK CHASE'. IN HAY ET AL ALBION'S FATAL TREE PENGUIN 1975 p191.
2. HAY OP CIT p207.

of which no one can claim any property, do belong to the King by his prerogative; and hence all those animals farae naturae, which come under the denomination of game are styled in our laws His Majesty's game, and that which he hath he may grant to another ... and from hence commeth the right of lords or manors, or others, unto game within their respective liberties ...

Burn continues:-

... for these restrictions do not take from the common people any right which they ever had; but only grant unto some persons those priviledges which before rested solely with the King ... (1)

That the Sussex gentry were quite certain of their rights over game is evidenced by the extent to which the game laws were enforced within the County, and by the fact that game law offenders were brought before the bench with increasing regularity. In fact by 1815, judging by the number of Petty Session convictions filed at Quarter Sessions, the Petty Session meetings of the justices were convened, as far as the criminal business of these courts were concerned, almost solely for the hearing of offences relating to the game laws. Apart from justifying game legislation on the grounds explained by Burn, such statutes were also vindicated in the minds of many for more pragmatic reasons. Game legislation, it was widely argued, prevented labourers and those of 'inferior rank' from squandering

1. BURN OP CIT pp391-392.

their time in the idle pursuit of game rather than in the more industrious activities associated with proper employment. Burn, in his preamble to the game laws, explained:-

... upon this foundation the several acts of Parliament are established, for the preservation of those species of animals, for the recreation and amusement of persons of fortune, unto whom the King, with advice from Parliament, hath granted the same: and to prevent persons of inferior rank from squandering that time which their station in life requireth to be more profitably employed ... (1)

Even Blackstone, for whom the King's traditional claim to special rights over game was unfounded, acknowledged that any general common right to take game might be restricted, amongst other things, to 'prevent idleness and dissipation in husbandmen, artificers, and others of lower rank'. (2)

Another fear which gave some measure of justification to the game laws in the minds of many stemmed from the notion that poaching would lead inevitably to crimes of a more serious nature. In February 1816, a year which marks the beginning of a substantial increase in the number of game law convictions filed at Quarter Sessions, the Sussex Weekly Advertiser reported:-

There are now under confinement in our House of Correction no less than twenty seven persons

1. BURN OP CIT IBID.
2. BLACKSTONE, SIR WILLIAM COMMENTARIES ON THE LAWS OF ENGLAND VOL II NEW YORK 1969 pp411 - 412.

for poaching, a practice which we are sorry to say but all too often leads its followers to crimes of a higher nature, and to such as have been known to subject them to the punishment of transportation. (1)

The Advertiser had already launched an attack on the local black market in game after the conviction of three men from Horsham, who were brought up for buying game from a poacher. After advancing the opinion that 'too much vigilance cannot be used in detecting persons receiving game, that practice being the root of the evil' the Advertiser went on to comment:-

... we need hardly observe that poaching is the first step to crimes of the most flagrant description, as is found by an enquiry into the early habits of culprits. (2)

Thus game legislation rested not only upon the contention that arguments relating to common rights were based upon popular misconceptions about the true nature of the Crown's prerogative over wild animals, but upon the more moral considerations of encouraging industry amongst the lower orders and preventing the progression from poaching to more serious crimes. P. B. Munsche writes:-

Most country gentlemen in the eighteenth century believed that the only thing which stood between the poor and 'immorality' was the necessity of having to work for a living. Without the discipline of constant

1. SUSSEX WEEKLY ADVERTISER FEBRUARY 12th 1816.
2. SUSSEX WEEKLY ADVERTISER JANUARY 1816.



labour, they agreed, the lower classes would

soon sink into lives of crime and debauchery ... (1)

Given that the game laws were regarded as a matter of vital concern to landed gentlemen it is perhaps surprising to find that so few offenders were brought before the justices in Quarter Sessions, especially in the light of the fact that the punishments which could be imposed by virtue of a summary trial were restricted to a fine or a relatively short term of imprisonment for game law offences. During the period 1795 - 1805 no game law convictions whatsoever were recorded in the criminal proceedings of Quarter Sessions. From 1810 - 1820 twenty offenders were convicted directly under game law statutes, this figure representing 0.94% of the overall number of convictions for the twenty years examined. It should perhaps be noted that seventeen of these game law convictions were recorded for the period 1817 - 1820 and that most arose out of the proceedings of the Petworth justices. Before speculating as to the possible reasons for such a situation it is worth emphasising that the figure of twenty game law convictions represents those offenders convicted directly under game law legislation. The number of offenders convicted in Quarter Sessions as an indirect result of poaching may well be significantly higher than this figure. The classification ascribed by the justices to a particular offence, especially in the case of assault, trespass or, by the beginning of the nineteenth century, vagrancy, may well serve to obscure the precise circumstances under which the offence was committed.

Trial at Quarter Sessions was required by law for a third or subsequent offence under the game laws. Convictions under the Night Poaching Acts were also required, by law, to be promulgated at Quarter Sessions.

1. P.B. MUNSCHE OP CIT p54.

Cases of assault against keepers, if the prosecutor chose to pursue this offence rather than another relating to game legislation, would also have been brought before the bench. The main advantage of bringing an offender before the justices in Quarter Sessions, it seems clear, lay quite simply in the fact that more severe punishments could be imposed. Night poaching was undoubtedly regarded as one of the most serious game law offences and it is no surprise to find that the majority of Quarter Sessions game convictions followed in the wake of the 1816 and 1817 Night Poaching Acts. It certainly seems to be the case that offenders brought before the bench and convicted under the game laws were done so in order to provide an example to others. Light sentences, such as fines, were not the usual form of punishment to be imposed by the justices in Quarter Sessions. Out of the twenty poachers convicted in the court during the second decade of the nineteenth century, nine were transported, two were given over to military service, one was sentenced to two years hard labour and a further three were imprisoned for six months. The remaining five offenders were imprisoned for three months and provided with a period of solitary confinement. All of those transported were done so as a result of the proceedings of the Petworth justices.

The obvious predominance of the Petworth Bench in Quarter Session game convictions, and the severity with which these justices occasionally treated such offenders, particularly during the second decade of the nineteenth century, may well reflect the profound differences in both the economy and pattern of land-ownership within various parts of the County. The rural development of Sussex had traditionally followed along two fundamentally distinct lines. In the Wealden districts to the north and north-east the economy of the County had developed around the exploitation of woodland and mineral resources, the focus of which up until

the middle of the eighteenth century, had been the iron industry. Here, according to Brian Short:-

Opportunities for settlement presented themselves for many displaced families. Woodland, waste and work in the many interlinked processes of the iron industry might offer themselves; and the lack of local manorial authority allowed greater security for waste-edge squatters and cottagers. (1)

On the other hand, the economic development of the south and south-western regions of Sussex had progressed along quite different lines. Here cereal, sheep and cattle farming was carried on with varying degrees of success. One of the most fertile and productive arable regions of Sussex was certainly to be found in the valley of the Western Rother, between Petersfield and Washington, where the Sandgate beds gave fertile loams. Petworth was at the heart of this productive farming area and the wealth of the locality was able to support an 'unusually rich complex of tradesmen and craftsmen' (2) within the town of Petworth itself. To the south of Petworth, avoiding the sterile Lower Greensand areas which comprised a narrow band from Blackdown in the extreme north-west of the County, around to Petworth, lay the Downlands, and further south still, the Sussex Coastal Plain. The Downlands were largely given over to sheep farming, but the deep 'Brown Earths' of the Coastal Plain were highly conducive to cereal farming. It was

1. BRIAN M. SHORT 'THE CHANGING RURAL SOCIETY AND ECONOMY OF SUSSEX 1750-1945' IN THE GEOGRAPHY EDITORIAL COMMITTEE (EDT) SUSSEX ENVIRONMENT, LANDSCAPE AND SOCIETY (UNIV OF SUSSEX) 1983 PP148-9
2. SHORT OP CIT p151

here, in these fertile and productive farming regions of Sussex, that the most powerful landowning families in the County had focused their attention. South-western Sussex was dominated by the Earls of Egremont at Petworth and the Dukes of Richmond at Goodwood, and during the nineteenth century, the Dukes of Norfolk at Arundel. The Wealden districts and the eastern Downland parishes were not without influential local families but the nature of land-ownership here was altogether more diffuse.

Perhaps the most important manifestation of the dominance of south-western Sussex by a few great landowning families lay in the development of, and contrast between, 'open' and 'closed' parishes. To polarize communities into simple and distinct categories is perhaps to ignore a wide variety of complex and unique economic and social characteristics, but on a very basic level the distinction, recognized by Short, is certainly a valid one. Put simply, a 'closed' village may be distinguished by the extent to which one or two large land-owners have social and economic control over the local community. 'Closed' parishes, argues Short:-

... were typically dominated from above by one land-owner who controlled most aspects of rural life through housing ... and social life through his control of the game laws, magistracy, advowson of the Church, provision of charity ... etc (1)

In 'open' parishes farmland was scattered amongst many owner-occupiers, cottagers and tenants, and social and political power was much less concentrated. It has been estimated that as late as 1870 over 84% of Downland parishes and 63% of those on the Coastal Plain were essentially 'closed' while only 23% of Higher Wealden and 30% of Lower Wealden parishes could be similarly categorised. (2) Under such circumstances it would seem

1. SHORT OP CIT pp 132-3

2. SHORT OP CIT IBID

reasonable to look to the more fertile regions of south-western Sussex, with their concentration of powerful land-owning families and their high percentage of 'closed' parishes, for a more rigorous enforcement of the game laws. It is also possible that in regions where local power was more centralized and less diffuse, and where the influence of large land-owners was rather more pervasive, less reservations were felt over the use of Quarter Sessions rather than summary justice.

It is also worth noting that the period 1799 - 1815 saw an intensification of the enclosure movement in Sussex, and in the south-west in particular. During this period a total of twenty two enclosure acts were passed for the County, which together enclosed approximately 18,000 acres of land. (1) All of these acts, with only two exceptions, were for West Sussex, and five specifically concerned 'non-arable' common land. Here again, the Lower Greensand areas around Petworth, under normal circumstances unsuitable for arable farming and consequently consisting of unenclosed common, were enclosed as a result of the agricultural boom of the Napoleonic years. Elstead & Trotton, Thakeham, Sullington and Shipley, Pulborough, Woollavington, Graffham and Horsham were all mentioned among those acts which involved the loss of common. It is certainly possible that the intensification of enclosure, especially in areas traditionally designated as common, immediately preceding as it did the substantial upturn in game law convictions, was accompanied by an increased determination to punish poachers and to provide a timely example to would-be offenders.

Whether or not the number of game law offenders are under-represented in Quarter Sessions by virtue of the various classifications and headings

1. W.E. TATE A HANDLIST OF SUSSEX INCLOSURE

AWARDS. SUSS ARCH SOC. (R. O. PUB WOJ) 1950

which were arbitrarily used to define criminal offences, it is quite evident that the court was generally regarded as an inappropriate platform for the prosecution of game law offenders. The many convictions that were filed by the justices acting out of sessions lend support to Douglas Hay's contention:-

Most of the game laws were part of that growing body of legislation that was executed by individual justices of the peace acting in their own neighbourhoods, hearing cases more often than not in their own houses ... (1)

Fortunately, the accusation that justices 'neglected almost always to record their convictions' does not apply to Sussex by the second decade of the nineteenth century. The fact that so much of the criminal business arising out of the game laws was dealt with by summary trial has certainly led to a great deal of suspicion. The Webbs were moved to comment:-

In order to facilitate the execution of these severe criminal statutes, offences against them could, as a rule, be tried summarily by any two justices - sometimes even by one justice ... In the hands of the country gentlemen of the eighteenth century, and still more of the beginning of the nineteenth century, the Game Laws became, it is clear, an instrument of terrible severity, leading not infrequently to cruel oppression of individuals of the 'lower orders' suspected of poaching. (2)

1. DOUGLAS HAY OP CIT p192
2. WEBB, SIDNEY AND BEATRICE ENGLISH LOCAL GOVERNMENT THE PARISH AND THE COUNTY (LONGMANS 1924) p598.

The Webbs go on to point out that the same suspicion of poaching:-

... lent an additional vindictiveness to the  
zeal with which most justices used their wide  
powers under the Vagrant Act. (1)

It is undoubtedly the case that the device of summary trial caused concern in some quarters. It is also true that justices could employ the Vagrancy Laws to deal with those, suspected of poaching, who could not give 'good account' of themselves. This quite apart from the powers of the justices in Quarter Sessions to give night poachers and poaching gangs over to military or naval service. However, in Sussex, it does not appear to be the case that large numbers of people were convicted, summarily, under the Vagrancy Laws. It is possible that countless numbers of cases were not filed of course, but according to the evidence available the justices did not resort to this expedient often. To imprison vast numbers of 'vagrants' would in any case impose such a burden on the County's penal institutions that it is unlikely prisons and houses of correction could have withstood the strain. Furthermore, sinister though the transfer of game law offences from Quarter Sessions to Petty Sessions might seem, the movement of business from the former to the latter was becoming increasingly common. By the beginning of the nineteenth century a wide variety of administrative business, from bridge administration to the checking of weights and measures had been at least in part, removed from Quarter Sessions to justices acting alone or in pairs. Where Parliament provided the opportunity of removing criminal business to justices acting out of sessions it is unlikely that the hard-pressed Court of Quarter Sessions would not have welcomed the move. Judging by the sheer volume of Petty Session game convictions filed at Quarter Sessions it is certainly the case

1. WEBB S & B OP CIT IBID

that the addition of criminal work of this kind would have added a not inconsiderable burden to the justices in Quarter Sessions. It is also likely that the relative speed and efficiency of the process of summary trial, compared to the slow, cumbersome and quarterly proceedings of Quarter Sessions, proved a great attraction to both justices and prosecutors alike.

As for the poachers themselves, it is by no means certain that they would have feared a summary trial any more than being dragged before the full bench. If, as seems possible, the rare Quarter Sessions convictions under the game laws were used to provide an example to anyone tempted to pursue this avenue of crime, then many poachers would undoubtedly have welcomed the comparatively mild punitive measures that the single justice could impose. No doubt there were many magistrates who abused the powers entrusted to them under various statutes, like the Duke of Buckingham who, in addition to convicting a local farmer of poaching himself, in his own house, and upon the evidence of his own keepers, we are told, 'refused to permit the defendant to bring in an attorney to help in the defence and even told the luckless farmer 'that if he uttered one impertinent word there was a Constable in the room to take him to gaol or to the stocks'. (1) In general though, there seems to be a prima facie case in Sussex for supporting P.B. Munsche's contention that:-

... considering the alternatives of impressment and civil prosecution, trial before a 'sporting justice' was apt to be welcomed by an accused poacher ... Mockery of justice or not, summary trial before a J.P. was often the means by which a poacher was restored to his family and his trade. (2)

1. S AND B WEBB OP CIT p599
2. P.B. MUNSCHE OP CIT p104



The figures for game law convictions filed by the justices at Quarter Sessions reveal the extent to which such offences predominated the list of Petty Session crimes at the end of the eighteenth and at the beginning of the nineteenth century. Again, though the figures presented cannot be regarded as reliable, they may at least provide an indication as to the operation and implementation of the game laws in Sussex. During the periods 1775 - 1805 and 1811 - 1820 a total of 750 convictions, from Petty Sessions, were filed at Quarter Sessions. Of this number, 429 convictions were a direct result of contraventions of the game statutes. These involved a wide range of offences from outright poaching, or failing to take out a licence or certificate under 24 GEO III c43 or 25 GEO III c80, to the possession of a lucher or an 'engine' for the trapping or destruction of game. This figure represents 57.19% of the total number of Petty Sessions convictions for the period. Douglas Hay, through his investigation of poaching in Staffordshire, has estimated that approximately one in ten convictions were returned to Quarter Sessions. (1) Whilst it is possible that during the second decade of the nineteenth century Sussex Petty Sessions convictions were being filed with a little more regularity, it is likely that a significant proportion of offenders escape the legal records altogether. It is thus quite apparent that offences against the game laws ranked along with grand and petty larceny as a common feature of crime in rural Sussex.

Generally, these game law convictions follow the same overall trend as convictions for larceny. Both are characterized by a progressive increase in both volume and proportion during the period investigated and in both a substantial post-war increase is apparent. During the period 1775 - 1790, 49 game law convictions were filed at Quarter Sessions and this figure represents 35.76% of the total number of convictions filed for the period.

1. DOUGLAS HAY OP CIT p192.

From 1796 - 1802 only one Petty Session conviction appears to have been filed and this was for vagrancy. Several reasons may account for this. Convictions may have been filed somewhere other than in the Quarter Session Order Books or the Session Rolls. The absence of Petty Session files could have been the result of administrative neglect on the part of the clerk of the peace. Magistrates generally may have found themselves to be under a great deal more pressure as a result of the French Revolutionary and Napoleonic Wars by virtue of the various administrative responsibilities they were expected to assume in connection with the war effort. (1) What is unlikely is that the sudden abatement of Petty Session convictions recorded at Quarter Sessions resulted from a dramatic drop - to almost nothing - in petty crime. Thus, for the period 1795 - 1805 only 89 convictions for Petty Sessions are recorded. Of these 45 were the result of the game statutes, which represents 50.56% of the total figure. The period from 1811 - 1820 however is characterized by a substantial increase in the number of Petty Session convictions filed at Quarter Sessions and an increase in the proportion of game offences to other types of criminal activity. During this period some 523 convictions were returned by justices acting out of sessions. Of this number 335, or 64.05%, were convictions under game legislation. The immediate post-war period from 1816 - 1820 accounts for 303 of the convictions filed, of which 234 were game law convictions, representing a remarkably high 77.22% of the total for these years. (2)

The very close relationship between game law convictions and convictions for larceny would seem to indicate that both kinds of crime were subject,

1. SUSSEX JUSTICES WERE, FOR EXAMPLE, REQUIRED TO ADMINISTER 42 GEO III c90 (SUSSEX QUOTA ACT), 37 GE O III cc3 & 22 (SUPPLEMENTARY MILITIA ACT) IN ADDITION TO PROVIDING RELIEF TO MILITIAMEN'S FAMILIES UNDER 43 GEO III c47.

2. REF APPENDIX 4.

at least in part, to the same stimuli. The Post-Napoleonic increase in the number of game convictions, following as it does in the wake of the post-war depression in Sussex agriculture, points to such factors as unemployment and underemployment, dependance on parish relief and general demoralization of the labouring classes being partly responsible for the upturn. In this sense simple theft and poaching are certainly not unrelated. P.B. Munsche notes a similar increase in the counties of Wiltshire and Bedfordshire. (1) and writes:-

... there is a good deal of evidence to suggest that the increase in poaching was directly related to the depression which hit the countryside at the end of the Napoleonic wars. (2)

Poaching however was not simply another form of larceny. The characteristics of this branch of the law and the nature of the offence both contain unique idiomorphic elements that deserve special consideration. Firstly, game legislation was perhaps in a more innovatory state than legislation relating to larceny. Game statutes were constantly creating, or formalizing, new offences. Though the Game Act of 1671 remained the most important single game law statute for the next hundred and fifty years new categories of offence were finding their way onto the statute books. An Act of 1755 made it an offence to deal in game. The Game Duty Act of 1784 made it an offence to hunt without licence. The Night Poaching Acts, and in particular those of 1816 and 1817, made poaching after dark a crime worthy of special consideration. It is undoubtedly the case that the long term increase in convictions for game law offences bears a close relationship to the state of game legislation at any given period. It is also worth noting<sup>ing</sup> that the very fact more severe Night Poaching Acts were

1. P.B. MUNSCHE OP CIT p138-139

2. P.B. MUNSCHE OP CIT p148

passed during the second decade of the nineteenth century may well point to an increased determination on the part of the gentry to clamp down on poaching and that this too may have been reflected in the volume of game law convictions.

Secondly, it does appear to be the case that the game laws were subject to a more universal violation than those relating to theft. Poaching and related offences appear to cut across class divisions in a way that grand and petty larceny does not. Accurate analysis of the social composition of those who offended against the game laws is greatly undermined by the inconsistency with which the necessary detail regarding occupation and status is provided. However, of the 429 game law offences filed at Quarter Sessions during the period investigated the necessary details have been entered for 289. Occupations of offenders vary considerably according to this information. Innkeepers, butchers, pedlars and waggoners appear quite frequently in the lists of occupations as one might expect, given that these people featured quite prominently in the informal distribution network that evolved around the traffic in game. Douglas Hay observed:-

Pamphleteers on the game laws pointed out that any country innkeeper could supply almost any quantity of game, that it was sometimes sold as 'openly as a joint of meat in a public shambles' and that stage waggoners acted as agents for the London buyers. (1)

Of the 289 offenders for which an occupation is given 30 were of the 'middling sort' such as yeomen, butchers, grocers and professional men. Another 30 can loosely be described as 'skilled' workers or artisans,

1. DOUGLAS HAY OP CIT p 204.

which included carpenters, blacksmiths, shoemsmiths and of course waggoners. By far the largest group were unskilled labourers or servants and 226 offenders were described thus. Three 'gentlemen' were also convicted for game law offences, though the basic premise of the game laws that such a sport was the preserve of gentlemen would presumably make such prosecutions rare. Thus 21.45% of those convicted for offences against game statutes by the justices were outside the 'labouring class'. No women whatsoever were convicted for offences directly under game legislation either in Petty Sessions or Quarter Sessions. Out of the 483 grand and petty larceny (male) offenders for which an occupation is recorded, during the period 1810 - 1820, in the Quarter Session records only 1.86% of offenders were not described as 'labourers'. (1) These figures compare as well as one might hope, given the different geographical location and economic circumstances of the populace, with those presented by Douglas Hay. Of the 121 men caught by the keepers on the Paget's Staffordshire estates, for which an occupation is given, 30% were labourers, 12% were described as servants, 14% were tradesmen or artisans. A further 20% belonged to the 'middle' class and included farmers, husbandmen and several curates. The remaining 15% were qualified sportsmen. Such figures, though differing quite widely from those of Sussex as a whole in the proportion of offenders shown to be outside the labouring class, do indicate, like Sussex, that the game laws were contravened by a wider cross-section of the community than grand and petty larceny statutes. People from a wider social spectrum participated in this kind of criminal activity, and the poacher may have enjoyed a degree of social support that would not have been extended towards the thief.

Although the game code may not have been enforced in as savage and

1. REF APPENDIX 7.

tyrannical a manner as its harshest critics believed, and although the transfer of business from the Court of Quarter Sessions to the justices in Petty Sessions was by no means confined to this kind of criminal offender, summary trial did have another advantage besides mere expedience. If we accept the notion that the game code was supported by a relatively small minority of land-owners, and that poachers enjoyed a degree of public sympathy and support, if not actual patronage, then it may well have been the case that prosecutors preferred to bring their cases before magistrates in Petty Sessions, who by virtue of the 1732 Act would automatically be qualified under the game laws, (1) than before a jury made up of unqualified and randomly chosen individuals. This, even though the actual punishment the offender received may have been much less severe. Such a contention is at best a cautious one. There is every reason to believe that expedience rather than petty 'tyranny' or the desire to avoid a hearing before a jury dictated where game law offenders should be prosecuted. After all, it was Parliament that provided the justices with their powers of summary jurisdiction, along with powers to carry out certain administrative arrangements without recourse to the Court of Quarter Sessions, and not a case of the justices misusing powers that were questionable in law. Having been granted power to enforce the game statutes however a wide variety of factors must have dictated the extent to which the justices chose to use them and it is possible, especially in a rural County like Sussex, that there existed a much closer affinity between prosecutor and magistrate than prosecutor and jury. The suspicions entertained by the Paget's steward may have been harboured by any number of prosecuting landlords:-

... there is no answering for a common jury as

they have in general a Strong Byass upon their

1. AN ACT OF 1732 REQUIRED ALL COUNTY JUSTICES TO HAVE  
LAND WORTH £100. p.a.

minds in favour of Poachers, being  
professed Enemies to all Penal Laws  
that relate to Game. (1)

1. Quoted in DOUGLAS HAY OP CIT p211.

## CHAPTER 5

### MISDEMEANOURS

Despite the substantial growth in the volume of recorded larceny offences, especially during the second decade of the nineteenth century, the bulk of offences that came before the justices in Quarter Sessions were concerned with relatively minor misdemeanours. This despite the fact that the justices out of sessions were dealing with a significant number of petty offenders who would otherwise have been brought before the bench. Apart from grand and petty larceny, which may be classed among the most serious offences brought before the justices in Quarter Sessions, the justices frequently heard cases of assault, vagrancy, leaving a wife and family chargeable to the parish, keeping unlicensed alehouses, breaches of economic legislation - particularly offences relating to weights and measures and faulty goods - and nuisances. Offences relating to highways were a particularly common form of nuisance and such offences usually concerned encroachment, dumping of rubbish, digging holes, allowing ditches to overflow and allowing hedges to overhang the highway. The decline of the manorial courts ~~leat~~ at the end of the seventeenth century meant that Quarter Sessions, for most of the following century, dealt with a great many nuisances. By the end of the eighteenth century however there was a definite decline in such cases which is more or less commensurate with the development of justices powers of summary jurisdiction. Cases of assault and vagrancy continue, throughout the period 1775 - 1820, to feature quite prominently in the records of the Court of Quarter Sessions. Offences which fell under the heading 'bastardy', that is, those which related to the birth of illegitimate children which could fall under the care of the parish overseers, virtually disappear from Quarter Session records altogether during the second decade of the nineteenth century. It is possible that with the individual justices preoccupation with game



offences during this decade, and with the Court of Quarter Sessions' energies diverted towards larceny, together with an increase in administrative work generated by the war, bastardy began to be dealt with on an informal basis or began to be treated much less as an indictable offence in Sussex.

Assault and vagrancy thus provide the focus for this section since such cases appear before the justices in Quarter Sessions with a far greater degree of regularity than other misdemeanours. During the periods 1775 - 1790; 1795 - 1805; and 1810 - 1820, 431 convictions for assault were recorded in the records of the Court, which represents 16% of the total number of criminal convictions for the period. Vagrancy convictions numbered 741, and offences which fell under this heading provide the largest single category of offender brought before the justices in Quarter Sessions. The proportion of vagrancy offences to other forms of criminal activity is a substantial 27.5% of the total. In addition to these two major categories of misdemeanour, which together make up almost half of all Quarter Sessions cases, bastardy offences, common 'nuisances' and the desertion of dependents were substantial enough in number to have had a significant impact on the total volume of Quarter Sessions criminal work. 229 bastardy convictions were recorded for the period investigated, which represents 8.5% of the total. Offences that fell under the heading of 'nuisance' and which mostly related to highways accounted for a further 147 Quarter Session convictions, or 5.45% of the total. Finally, the deserting of dependents, leaving them chargeable to the parish, provided a further 107 Quarter Session convictions and this figure represents 3.95% of the total number of criminal convictions. (1)

Indictments for assault included a wide range of actions 'against the person'

#### 1. REF APPENDIX 2.

from a simple threatening gesture to attempted murder or rape. Burn defines the offence of assault thus:-

Assault ... is an attempt to offer, with force and violence, to do a corporal hurt to another, as by striking at him with or without a weapon; presenting a gun at him, at such a distance to which the gun will carry; or pointing a pitchfork at him, standing within reach of it; or by holding up one's fist at him; or by any other such like act, done in an angry, threatening manner. (1)

Battery is given a separate definition by Burn and an offender thus convicted must have been the cause of an actual injury, 'be it never so small', to another. However, no technical distinction between the offence of assault and that of battery is made in the Quarter Session Order Books or Indictment Books and assault is taken to include assault and battery. The details of assault cases are often not provided in the Quarter Session records. Where a case of assault had been traversed in Quarter Sessions a description of the circumstances of the assault together with the details of the offender and of the person assaulted are usually provided. However, minor misdemeanours like assault, causing a nuisance and simply vagrancy were frequently not traversed. Under such circumstances the Order Books usually contain only a brief note of the offence, the offender, the parish and occupation of the offender, and the penalty imposed by the court. Thus in many cases of assault, as with other less serious misdemeanours, the detail that provides such a rich record in cases of larceny is frequently missing.

1. BURN, JOHN. THE JUSTICE OF THE PEACE AND PARISH OFFICER. (19th Edt) VOL II (LONDON 1800) p 145.

Even with the sometimes scant information available on the cases of assault brought before the justices in Quarter Sessions it is quite clear that the Court generally regarded crimes against the person with much less severity than crimes against property. In case after case of assault the words 'till his life was greatly despaired of' accompanies the details of the offence, and in many such cases the punishment imposed by the Court seems to be comparatively mild. William Holdsworth himself made the comment that 'the law punished very inadequately wrongs to the person which did not result in death'. (1) In January 1799 it was recorded at the Lewes Sessions, that:-

Richard Matthews, convicted of assault upon one Richard Townsend with intent to commit a murder is by this Court fined 1/- and committed to the said House of Correction for the space of twelve calendar months and until he pays the said fine, and then to be discharged. (2)

At the following April Sessions Richard Blaber was transported for the theft of hay and oats to the value of 4/6d. (3) Such contrasts in punishments between assaults and thefts are numerous and frequent enough to be regarded as a characteristic of Quarter Session convictions. It is possible that more detailed case descriptions would reveal that the decisions of the bench with regard to the relative punishments of thieves and assailants, were based on considerations other than a deeper regard for the preservation of property over concern against personal violence. Doubtless in many instances this was indeed the case. In the absence of full and detailed case descriptions however, and on the evidence immediately available, it does

1. W.S. HOLDSWORTH A HISTORY OF ENGLISH LAW VOL XI. (METHUEN 1938) p 536.

2. E.S.R.O. QO/EW 33 LEWES 17th JANUARY 1799.

3. E.S.R.O. QO/EW 33 LEWES 4th APRIL 1799.

appear that Holdsworth's observation is a fair one. In July 1815

Thomas Mole, a labourer from Salehurst, was convicted by the Lewes justices for the attempted rape of Catherine Reed. Mole was given a sentence of six months imprisonment together with a whipping. (1)

Generally, a conviction for assault resulted in a fine, a short term of imprisonment, or sometimes both. Imprisonment was sometimes accompanied by a whipping. The law did, however, provide for certain categories of assault to be punished more severely. For example, by 6 GEO II c23 (1733) 'assaulting in the street or highway, with intent to spoil people's cloths, and so spoiling them', was made a felony and the offender became liable to the punishment of transportation. Similarly, assault with intent to rob was also made a felony by 7 GEO II c21 (1734). The 'Black Act' of 1723 had already made it a felony to 'wilfully and maliciously shoot at any person in any dwelling house or other place'. 2 GEO II c22 (1729) and 36 GEO III c9 (1796) provided stiffer penalties for those who committed assault in order to hinder the purchase and carriage of corn. 26 GEO II c19 (1753) made it a felony 'beat, wound or kill, or to obstruct the escape of any shipwrecked person'. All these acts dealt only with special kinds of assault cases and it would seem that most of those convicted under these enactments were done so at the Assize Courts rather than at Quarter Sessions. The first act to attempt a more general updating of the laws relating to assault was 43 GEO III c58, Lord Ellenborough's Act, which among other provisions, made it a capital offence to resist arrest with force - which again placed this category of assault generally within the jurisdiction of the Assize Courts. Although provision was made in most of these statutes for the transportation of those convicted in Quarter Sessions, the Sussex justices did not resort to

1. E.S.R.O. QO/EW 41 LEWES JULY 1815.

this mode of punishment in cases of assault, regardless of the circumstances of the offence.

Where they can be ascertained, the motives for assault appear to be as varied as for those of any other form of criminal activity. Assaults upon women, often arising out of a domestic dispute within the family or out of obvious sexual motives, are frequently recorded in the session records. Assaults against certain officials such as constables, game-keepers, excise officers, overseers of the poor and turnpike gate-keepers also feature quite prominently in assault convictions, as do those on innkeepers. Details of the more extreme or unusual cases of assault were often reported in the pages of the Sussex Weekly Advertiser. In October 1796 the Advertiser reported the case of John Hilden, though Hilden does not appear by name in the article, convicted in Quarter Sessions for an assault upon his wife. (1) The Advertiser reported that:-

... a man, for beating his wife three weeks after marriage, was committed to the House of Correction for three months. In court the fellow urged nothing in his defence, tho' it is said he may have built a tolerably good one upon the provakation he received from his wife, which was that having imposed herself on him as a virgin, after she had been the mother of two bastard children, and saddling him with the debt of ten pounds for their maintenance, which being demanded before the expiration of the honeymoon, proved the deception, disturbed their conjugal felicity and provoked the blows. (2)

1. E.S.R.O. QO/EW 33 LEWES 7th OCTOBER 1796.
2. SUSSEX WEEKLY ADVERTISER 17th OCTOBER 1796.

It is impossible to determine the extent to which the justices acting out of sessions were obliged to deal with minor assaults and affrays. Given that the expense of a formal prosecution would have fallen entirely on the plaintiff and would not have been reimbursed in full or in part, it seems likely that many would have preferred the informal arbitration of a magistrate than the trouble and expense of a formal prosecution before the justices in Quarter Sessions. On cases of minor assault J.M. Beattie notes:-

The forestalling of criminal prosecutions in such disputes by the intervention of a magistrate was indeed seen to be part of his work in bringing harmony where there was discord, and can be found in England throughout the eighteenth century. (1)

During the period 1775 to 1820 there is a gradual, overall increase in the number of assault convictions. This increase however should be viewed in the light of two important considerations. Firstly, unlike larceny, figures for assault do not show a dramatic increase during the post-Napoleonic period. This suggests that the pattern of thefts was dictated by circumstances very different from those of assault. If the increase in theft was accompanied by a corresponding increase in assaults against the person, perhaps carried out during the course of the theft, then this offence was not given separate consideration, though undoubtedly a larceny which involved violence or the threat of violence would have been treated more severely by the justices in Quarter Sessions than simple stealing. Secondly, assault shows a relative decline when viewed against other kinds of criminal activity and against larceny in particular. The 126 convictions for assault recorded for the period 1775 - 1790 represented 20.16% of the

1. J.M. BEATTIE 'JUDICIAL RECORDS AND THE MEASUREMENT OF CRIME IN C18th ENGLAND'. IN L.A. KNAFLA (ED.)  
CRIME AND CRIMINAL JUSTICE IN EUROPE (ONTARIO 1981) p131

total number of Quarter Sessions convictions for these years. The period from 1795 - 1805 saw 113 assault convictions recorded for Quarter Sessions, a relative decline against other crimes to 11.74%. The years 1810 - 1820 witnessed a general increase in the number of assault convictions to 192, representing 16.65% of the total number of convictions for this period. The slight upturn in assault that occurred during the period 1815 - 1820 to 121 cases, however, does not represent an overall increase in relation to other offences. In fact the proportion of assault convictions actually fell to 12.37% of the total figure.

The relatively moderate, gradual, increase in the number of simple assault convictions recorded for Quarter Sessions during the period 1775 - 1820, which again, must be viewed in the light of a relative decline in proportion to other offences from 20.16% to 12.37%, may be explained in several ways. The growth of the County's population, which increased an estimated 73,857 during the first two decades of the nineteenth century, undoubtedly had a significant impact on the total volume of assault convictions. The propensity of individuals to resort to the formal procedure of a prosecution in Quarter Sessions, and the extent to which magistrates actively encouraged or discouraged formal prosecution, may also have had an impact on the overall pattern of assault convictions during the period investigated. The level of assault convictions at Quarter Sessions may also have been affected by the nomenclature used to define the various acts of violence that brought offenders before the magistracy. For example, those convicted of causing an 'affray' appear to have been described in the Order Books as having 'caused a nuisance', yet the actual distinction between an 'affray' and an 'assault' was a very fine one. Burn described an affray as:-

... a public offence to the terror of the King's subjects,  
so called because it affrighteth and maketh men afraid ...

from whence it seemeth clearly to follow, that there may be an assault which will not amount to an affray; as when it happens in a private place out of the hearing or seeing of any, except the parties concerned, it cannot be said to be to the terror of the people. (1)

Thus it would seem that an undefined number of 'assaults', if carried out in a public place, 'to the terror of the King's subjects', would have been prosecuted as 'affrays' and the offender, upon conviction, recorded a 'nuisance'. In such cases the offender would have been fined in much the same way as someone convicted of a simple assault, or, at the discretion of the Court, be asked to find sureties for good behaviour.

What is clear however, despite the special problems associated with the interpretation of assault convictions, is that simple assault did not increase alongside thefts and that the post Napoleonic depression, under or unemployment, the influx of ex-servicemen, dearth or agricultural depression did not lead people to commit crimes against the person in the same way as such factors seem to have led people to commit crimes against property. Whether such conditions had the net result of increasing violent property crimes is of course another question.

In common with the figures for assault presented by J.M. Beattie in his study of female crime in Surrey during the eighteenth century, the number of women convicted for assault during the period investigated is very small. (2) Out of the 305 assault convictions recorded during the years 1795 - 1805 and 1810 - 1820 only 30 offenders, less than 10%, were female. As with instances of larceny it seems reasonable to suppose that the social

1. BURN OP CIT p145-6

2. J.M. BEATTIE 'THE CRIMINALITY OF WOMEN IN EIGHTEENTH CENTURY ENGLAND' JOURNAL OF SOCIAL HIST. SUMMER 1975 VOL8.



circumstances of women would not have provided so great an opportunity for such offences, particularly in rural communities where social contact was possibly more restricted. Certainly the disparity between male and female assault convictions is far too great to be explained by under-reporting.

Another major feature of the criminal work of the justices in Quarter Sessions was the number of vagrants that constantly and consistently appeared before the justices in Quarter Sessions. In fact, the largest single group of offenders to appear before the bench were those convicted for contravening statutes relating to vagrancy. The 741 vagrancy convictions for Quarter Sessions, recorded for the periods 1775 - 1790; 1795 - 1805 and 1810 - 1820, were not, however, reflected in the Petty Sessions vagrancy convictions. According to the Petty Session files only one vagrancy conviction is recorded for the corresponding periods up to 1805, whilst a total of 56 vagrants it seems were convicted by the justices out of sessions during the second decade of the nineteenth century. The Court of Quarter Sessions recognized several categories of offence under the general term 'vagrancy' and the term encompasses those convicted of being 'idle and disorderly', 'rogues and vagabonds' and 'incorrigible rogues'. In practice, any man who ventured outside of his original parish of settlement - which in most cases meant his parish of birth - and who was unable to fulfil certain requirements or who was unable to provide sureties against becoming chargeable to the parish poor rate, was a potential vagrant. Thus, to an extent, vagrants were a more or less inevitable consequence of legislation designed to implement an effective parish based system of poor relief by restricting the mobility of that element of the population most likely to fall on the parish rates, but which failed to accommodate provision for mobility when the need arose. Legal restrictions upon the mobility of the poor date back to Elizabethan

statutes, like that of 1597 (1) for rogues and vagabonds, which formed the basis of poor law legislation for the next two centuries. However, the Act of Settlement of 1662 (2) was the 'pivot around which the administration of poor relief was to swing' (3) until the 1834 Poor Law Amendment Act swept away the principles that formed the basis of this Act. By the provisions of this Act the parish overseer was invested with the power to remove any person or persons that settled in his parish but who rented a tenement under the value of ten pounds a year, if such persons became chargeable, or looked like becoming chargeable, to the parish rate. For a man to become eligible for a settlement certificate, and by virtue of this to poor relief from the parish rates, he had to fulfil certain conditions. Apart from gaining settlement by birth, a certificate could be granted at the expiration of forty days of residence. The serving of an apprenticeship within a particular parish was also a qualification for settlement, presumably because one who had completed an apprenticeship was more likely to be equipped with the means of supporting himself. An Act of 1685 (4) made the gaining of a legal settlement in an adopted parish much more difficult by providing that the forty days residential qualification would only be granted after notice of residence had been given in writing to the overseer of the poor, and a further Act provided that notice of residence had to be published in church. (5) As a result of this additional legislation the gaining of a legal settlement outside of the parish of birth became virtually impossible unless a person could provide sufficient sureties against becoming chargeable to the poor rate. Once the notice of residence had been effected, and if it

1. 39 ELIZ C4.

2. 13 and 14 CHARLES II c12.

3. MARSHALL D. THE ENGLISH POOR IN THE EIGHTEENTH CENTURY (ROUTLEDGE 1926) p161.

4. 1 JAMES II c17.

5. 3 Wm and MARY c11

became obvious that the new resident was going to become a burden on the parish poor rate, then it became the responsibility of the parish overseer to arrange his removal from the parish. The overseer usually brought the newcomer before an examining magistrate who established the last legal place of settlement, and then issued an order commanding that the non-parishoner be returned to and received by the other parish. Thus a large number of vagrants, even among those appearing before the justices in Quarter Sessions, if they were guilty of no more than becoming chargeable to an adopted parish, were not punished but merely 'removed'. At this stage the procedure followed by the Court was much less 'criminal' than 'administrative' since the justices were merely following the procedures laid down in the Poor Law statutes.

Vagrancy appears to have become a criminal offence in the eyes of the justices when the vagrant compounded the simple act of vagrancy - ie being unable to support himself in a parish other than his legal place of settlement - by some other action. It was not so much vagrancy that was penalised as 'going about begging' or being 'unable to give good account of himself'. The various distinctions between the different categories of vagrant created by 17 Geo II c5, namely the 'idle and disorderly', 'rogues and vagabonds' and 'incorrigible rogues' more often than not dictated the severity with which the Court of Quarter Sessions would deal with offenders. In the first category were placed all those who threatened to leave their wives and children chargeable to the parish, all those who returned to a parish from where they had been legally removed by order of a justice of the peace without a certificate or testimonial from a parish officer or an employer, in addition to those not having the means to support themselves and who 'live idle without proper employment and refuse to work for the usual and common wage given to other labourers in like work'. Beggars were also included among the 'idle and disorderly'. 'Rogues and vagabonds'

could technically include almost all persons found outside their parish of settlement without visible means of support, but specific classes of persons designated thus were actors, fencers, jugglers, bearwards, patent gatherers, minstrels and 'all persons pretending to be gypsies or wandering in the habit or form of Egyptians'. This category of vagrancy also included 'all persons who run away and leave their wives and children chargeable to any parish or place' and 'all persons wandering abroad and lodging in alehouses, barns, out-houses or in the open air, not giving good account of themselves'. The more general category of 'rogues and vagabonds' accounted for most of those brought up for vagrancy in Sussex during the periods investigated. Finally, 'incorrigible rogues' seems to have referred to those who were persistent or notorious offenders in the eyes of the justices.

The penalties imposed upon an offender depended very much on the category to which, under the general heading of vagrancy, he belonged, but the bench here as in most other kinds of offence exercised a good deal of discretion and it was not always the case that an 'incorrigible rogue' or a 'rogue and a vagabond' was punished more severely than one simply described as a vagrant. The usual course of action adopted by the bench for dealing with vagrants was simply to remove them to their place of legal settlement. This was not always as simple and as straightforward as it sounds since the cost of removal could be considerable, and the receiving parish frequently appealed against the removal orders of justices acting out of sessions. The administrative work that arose out of the legislation concerning settlement and removal in fact went far beyond simply returning an individual to a neighbouring parish or to the border of the County. Vagrants were frequently whipped or formally recorded in the session records as 'rogues and vagabonds' and discharged, and this made a further offence under the vagrancy laws subject to much stiffer penalties. By the beginning

of the nineteenth century imprisonment, together with an additional punishment such as hard labour or solitary confinement, was becoming quite a standard response to vagrancy, particularly in cases where individuals were recorded as 'rogues and vagabonds' or 'incorrigible rogues'. Under 17 GEO II c5 (1744) justices were empowered to impose the penalty of transportation on 'incorrigible rogues' but the Sussex justices seldom appear to have resorted to this drastic measure. The only vagrant to have been transported in fact, during the years examined, was one Thomas Lindell, who appeared before the Petworth bench in April 1812. The justices obviously considered him to be 'incorrigible' because of his previous conviction for vagrancy before the Surrey justices.

(1)

The French Revolutionary and Napoleonic Wars provided the justices with an effective alternative to transportation. It seems likely that when the need for men was more urgent the services, and especially in this case the Navy, overcame any reservations they may have harboured and accepted petty offenders and vagrants into their ranks. Justices in Quarter Sessions had been granted the power to turn vagrants over to the services by 17 Geo II c5 (1744) and these powers were extended to cover, amongst others, those without lawful trade, by 35 Geo III c34 (1795). The justices certainly preferred to use this action against vagrants, during the war years at least, than transportation. In all some 19 vagrants were given over to naval service during the period investigated and a further 6 were handed over to the army. This practice ceased completely after 1813 for all offenders, and this, in the wake of later post-war demobilization, and of the less urgent need for manpower, seems quite understandable. Nevertheless, although transportation was rarely used against vagrants by the justices in Quarter Sessions the Advertiser went to some lengths to point

1. E.S.R.O. QO/EW 40 PETWORTH 12th APRIL 1812.

out that it was certainly a possibility, even for female offenders. In July 1815 the journal reported:-

The gaol calendar exhibited 27 prisoners, most of whom were vagrants, committed principally for begging in the streets of Brightelmstone. One Mary Watson, a young woman about 20, was recorded an 'incorrigible rogue', and removed to the House of Correction, to be kept to hard labour for the space of six months, and then to be passed home. This prisoner should be careful how she offends in the like manner again, lest she brings upon herself the punishment of transportation. (1)

Whipping had been the traditional punishment for vagrancy for centuries and this practice was widespread in Sussex throughout the period investigated. Frequently vagrants were held over in a prison or house of correction for a week or two while two or more sessions of corporal punishment were undergone. By 34 Geo III c45 'no female convicted of being a rogue and a vagabond or an incorrigible rogue, before any justice, or at sessions, could be whipped in any case whatsoever'. (2) Despite the clarity of the act on this point the Sessex bench continued to administer corporal punishment to a large number of vagrants, regardless of sex, until well after 1794. At the Lewes sessions of July 1797 Rebecca Quintan was brought before the bench as a vagrant and was punished by a short term of imprisonment and a private whipping. (3)

1. SUSSEX WEEKLY ADVERTISER 17th JULY 1815
2. BURN OP CIT p458.
3. E.S.R.O. QO/EW 32 LEWES 14th JULY 1797.

The following year the same group of justices imposed the same punishment on Sarah Young for 'going about begging'. (1) In both these cases there is no record of the women having been brought before the bench before, and it seems possible that these additional punishments were administered as a result of a parish overseer or constable's report. The case of Phebe Sturgess is a little clearer since she was regularly brought before the bench. In October 1811 Phebe Sturgess came before the Petworth justices on a charge of vagrancy and, as with most vagrants brought before the justices, she was removed to her parish of settlement. (2) In January 1812 she again appeared before the Chichester justices for vagrancy, and was given a much more severe sentence of twelve months hard labour together with a public whipping. (3) Undeterred Phebe Sturgess again appeared before the Petworth justices in April 1813 for a breach of the peace, for which she was imprisoned subject to a recognizance. (4)

Apart from the combined conviction rate for grand and petty larceny, vagrancy is the single most common offence that appeared before the justices. The pattern of vagrancy, after 1787, reflects a consistently high conviction rate. Before 1787 convictions in Quarter Sessions for vagrancy were quite low and it is possible that the problem was dealt with on an informal, parish level. Petty session vagrancy convictions were non-existent during this period. The period from 1775 - 1790 saw 122 'vagrants', that is, all of those who fell under this general heading, convicted in Quarter Sessions. To this may be added the 40 offenders

1. E.S.R.O. QO/EW 32 LEWES 12th JANUARY 1798.
2. E.S.R.O. QO/EW 40 PETWORTH 8th OCTOBER 1811.
3. E.S.R.O. QO/EW 40 CHICHESTER 14th JANUARY 1812.
4. E.S.R.O. QO/EW 41 PETWORTH 27th APRIL 1813.

convicted for deserting their wives and families and leaving them chargeable to parish relief. Unlike larceny convictions, which showed a dramatic post-war upturn, the highest number of convictions for vagrancy before the justices in Quarter Sessions occurred during the period 1795 - 1805. During these years a total of 366 vagrants were convicted, 193 of which were accounted for during the period 1803 - 1805. A further 26 offenders were brought up for leaving families dependent on parish relief. The period 1810 - 1820, rather surprisingly, witnessed a reduction in the total number of vagrancy convictions to 253, but a slight increase in the number of men deserting dependants to 41. As a proportion of the total number of Quarter Sessions convictions, vagrancy convictions account for 25.92% during the period 1775 - 1790, 40.74% during the period 1795 - 1805 and 25.36% for the years 1810 - 1820. The period from 1775 - 1786 however saw only 41 Quarter Session vagrancy convictions.

Before drawing conclusions from the pattern of vagrancy convictions reflected in Quarter Session records it should be noted that the figures do little more than provide an indication as to the possible level of vagrancy within the County. The relationship between Quarter Sessions convictions and vagrancy generally is unlikely to be a constant one. The majority of vagrants were probably dealt with by justices out of sessions, and in fact a large proportion of vagrants came to Quarter Sessions as a result of an appeal against an individual justice's removal order. Parish constables, who had the closest dealings, in an official capacity, with the vagrant community, were like parish overseers, unpaid servants of the County. It seems likely that the office was not a popular one and it is doubtful that the responsibilities attached to it were always performed efficiently or conscientiously. Various enactments laid down penalties for constables and other parish officers who failed to fulfil the legal obligations of their office with a sufficient degree of competence. Burn, in specifying the



duties of the parish constable with regard to the apprehension of vagrants, noted:-

If the constable shall refuse or neglect to use his best endeavours to apprehend or convey to some justice such offenders; or if any other person, being charged by the justices so to do, shall refuse or neglect to use his best endeavours to apprehend and deliver to the constable or to carry such offender before some justice, where no constable can be found; he shall .... forfeit 10s to the poor, by distress. (1)

Numerous orders, cajoling, persuading, encouraging and even threatening parish constables appear in the Quarter Session Order Books as evidence of the justices attempts to promote a greater degree of efficiency. In January 1798 the Chichester justices recorded that:-

The Magistrates of the County of Sussex met and assembled at this session, having taken into consideration the great number of bypassers and other vagrants of different descriptions infecting the same, were pleased to order that if any bypassers or other vagrants ... should be found within this county after the 12th February next they will be punished as the law directs ... of which all constables and other officers are particularly ordered to take notice. (1)

1. BURN OP CIT p456.

2. E.S.R.O. QO/EW 32 CHICHESTER 9th JANUARY 1798.

It does appear that such orders and resolutions did have at least some effect, however temporary, on the number of vagrants brought before the justices. The 14 vagrants convicted for 1797 rose to 28 the following year, most of whom were convicted in the first quarter of the year.

Apart from an understandable disinclination to increase their workload by conscientiously scouring the countryside for all those who could be classed as 'vagrants', there were real financial disincentives for the unpaid constables to take this area of responsibility seriously. The initial cost of removal in cases of uncontested vagrancy was often met by the constables, who would claim recompense from the County treasurer. The receipts for the cost of removal had to be presented in Quarter Sessions, whereupon payment was authorised by the justices. Thus, a petty constable could find himself not only responsible for bringing a vagrant to court, which in itself could be the cause of great deal of trouble and expense, but also, under 11 Wm III c18 (1698/9), for the initial cost of removal. Under such circumstances it would not be surprising to find a flourishing informal system of 'removal' from parish to parish based, perhaps, on threats and intimidation rather than the formal process of the law. It was in an attempt to make the bringing of vagrants to justice a more consistent and effective process that the system of rewards contained in 17 Geo II c5 (1744) was instituted. By this Act a scale of rewards, which varied according to the category into which the 'vagrant' fell, was implemented, the sum varying between five shillings and ten shillings. The payment of these rewards, which could be claimed by anyone who apprehended a vagrant, was initially met out of the poor rate by the parish overseer. Half the sum would be returned to parish funds from county stock, but half had to be met from parish rates 'as a punishment to the parish for suffering the poor to beg'.

Thus vagrancy convictions, distilled as they were from an inestimable

number of displaced persons through a complex medium of disincentives and rewards, certainly do not provide an absolute indication of the possible level of vagrancy within the community at a given period. Nevertheless, such figures do point to certain tentative conclusions. Firstly, the transient vagrant population was taken very seriously by the justices. The number of vagrants punished, often quite severely, gives some substance to the contention that the problem of vagrancy was considered by contemporaries as much more than just a problem of poor law administration. A transient population was obviously a threat to a system of law enforcement which relied as much as anything on local knowledge of the community and its inhabitants. The vagrant was likely to have been regarded as a potential, if not an actual criminal, withdrawing his labour from the common stock and living by his wits at the expense of his neighbours, a point made by Elizabeth Melling, who comments:-

The amount of legislation passed against  
vagrants, masterless servants and people  
taking in lodgers reflects the very real fear  
of the potential source of disorder and crime  
which these people posed. (1)

Undoubtedly too, the unlicensed players and performers that made up a considerable part of the 'rogue and vagabond' class of vagrants, were blamed for distracting the labouring classes from more industrious pursuits. A large vagrant population also gave rise to a great deal of administrative work when the problem was dealt with officially, and by the beginning of the nineteenth century this was a burden the justices in Quarter Session could well have done without. These reasons alone would provide the

1. ELIZABETH MELLING CRIME AND PUNISHMENT KENTISH  
SOURCES VI (K. C. C. 1969) p32

justices in Quarter Sessions with good reason to punish the persistent or unrepentant vagrant with something more than mere removal.

What is more difficult to explain is the relative consistency of vagrancy convictions despite changes in the economic and social scene. The post-Napoleonic agricultural depression certainly had an impact on poor-relief expenditure (1) but there was no corresponding increase in the number of vagrants convicted in Quarter Sessions. The Vagrancy Act of 1744 provided for ex-servicemen 'wanting subsistence' to be allowed to beg without the fear of being prosecuted under the provisions of Poor Law statutes and this enactment was re-established by an Act of 1803. (2) It seems likely that returning servicemen would have had little impact on vagrancy figures unless, in the long term, they persisted in offending against vagrancy legislation, if the provisions of these enactments were adhered to. The stable vagrancy conviction rate in the face of post-war depression may also suggest that the problem had become too large to deal with on an official level and that county and parish officials were forced to permit a higher level of social migration. It is equally likely, especially in the light of the increase in expenditure on the poor in post-war years, that depression encouraged people to seek the relative security of their parish of settlement, and that in the face of under-employment and the uncertainties that would have accompanied the winter months, the number of vagrants remained relatively constant, or even diminished.

1. D.A. BAUGH 'THE COST OF POOR RELIEF IN S.E. ENGLAND' 1790 - 1834 ECON HIST REVIEW 2nd SERIES, 28, 1975.
2. 43 GEO III c61 (1803)

## CHAPTER 6.

### PUNISHMENT

By its very nature, as a court primarily created for the hearing of less serious offences such as minor theft, misdemeanours, nuisances and relatively minor infringements of the law, the Sussex Court of Quarter Sessions was well used to dealing in secondary punishments. By the end of the eighteenth century a quite complex and wide ranging scale of secondary, non-capital, punishments had evolved to meet the particular, often finely tuned, requirements of the bench. For most of the period investigated the justices in Quarter Sessions had available to them the punishments of transportation, imprisonment, fining, corporal punishment and compulsory enlistment in the army or the navy. In addition, extra conditions could be attached to a term of imprisonment such as a period of hard labour or solitary confinement and offenders could be asked to enter into a recognizance to observe certain conditions. Combinations of punishments were also imposed by the bench upon offenders, and prisoners were frequently fined or whipped and imprisoned.

A term of transportation, usually for seven years and occasionally for fourteen, was undoubtedly the harshest punishment in the armoury of the justices in Quarter Sessions. Although 'banishment' has a long history, transportation, as a well regulated and widely used court administered punishment, really dates from the beginning of the eighteenth century as far as Quarter Sessions was concerned. 4 Geo 1 c11 (1718) and 6 Geo II c23 (1719/20) established this penalty on a local level for a variety of offences and placed the responsibility for the administration of the punishment on the county or borough authorities concerned. The outbreak of the American War of Independance effectively closed the American Colonies to transported criminals. The disruptions caused by the

temporary loss of a suitable place 'beyond the seas' to which such felons could be despatched may well explain why no sentences of transportation were passed by the Sussex justices during the period 1776 - 1779. The provision of prison hulks, set up under 16 Geo III c43 (1776) did provide an emergency alternative to transportation, but this expedient was not used by the Sussex bench until 1780, when two felons were sent to the hulks until a suitable destination could be found for them. During the 1780s all those sentenced to a term of transportation were given over to the prison hulks, which were first set up on the Thames, and later established at Plymouth and at Portsmouth.

By 24 Geo III s2 c56 (1784) transported criminals could be sent to such places as his Majesty with the advice of his Privy Council shall declare and appoint', and in 1786 an alternative to the American Colonies was established with the designation of New South Wales as a penal colony. The first convict ships set sail for Australia in 1787 and it is likely that most of those sentenced to a term of transportation during the 1790s and beyond would have found themselves sent there, perhaps after a term on one of the hulks. During the periods 1795 - 1805 and 1810 - 1820, 107 criminals were transported by the justices in Quarter Sessions and this figure accounts for about 5% of those punished by the Court during these years. The period 1816 - 1820 saw the highest number of offenders transported with a total of 74 for these years alone. Most of those transported were convicted of theft, although a number of vagrants were also punished in this way. During the post-war period poachers and those convicted under game statutes were also, on occasion, transported. Without doubt the number of offenders transported would have been higher but for the practice, particularly predominant during the period of the French Wars, of giving over offenders to military or naval service.

From 1795 - 1805 24 offenders were pressed into naval service and the period 1810 - 1815 saw another 10 dealt with in this way. 10 offenders were given over to the army during the same period. This practice appears to have ceased after 1815, and at least part of the increase in transported criminals during the post-Napoleonic period may have been contingent upon this change of policy.

The most common punishment for minor misdemeanours, such as nuisances, was a fine. Quite often individuals were fined a relatively small sum, perhaps one shilling, and sentenced to a term of imprisonment. In such cases the main punishment was imprisonment and the fine was secondary. For those to whom the fine was the main punishment, either because it was relatively large or because it was the only punishment administered by the Court, imprisonment was often contingent upon the payment of the fine. Nonetheless, in such cases the fine itself was still the prime punishment, unless the Court deliberately set out to disguise long prison sentences by means of imposing fines on individuals unable to pay them. Thus the figures for fining presented include the latter, but not the former, group of offenders. If the Court of Quarter Sessions, as a matter of course, did deliberately use fines as an indirect method of imprisonment then the extent of the practice would be difficult, if not impossible, to determine without proper knowledge of each individual's financial circumstances and resources. In only one case, during the period investigated, does a pecuniary qualification appear to have been placed upon the release of an individual with the intention of keeping the offender in prison, and this was not in the form of a fine but rather in the requirement to find 'sureties' for good behaviour. In 1788 John Rawlins, a labourer, was convicted for a breach of the peace against Sir George Thomas, a frequent member of the Petworth bench from October 1784. Rawlins was asked to find sureties for a substantial £200 against his

release. (1) According to Blackstone the practice of imposing too high a fine upon an offender, with the intention of effecting a long term of imprisonment, was unconstitutional, though he acknowledged that fines should be at the discretion of the courts. (2) The number of offenders punished by means of a fine, and for whom a fine was the main punishment rather than an incidental one, amounted to 260, which represents 12.25% of the total number of offenders punished during the periods 1795 - 1805 and 1810 - 1820. Fining remained the standard punishment for misdemeanours such as causing a nuisance, exercising a craft without serving an apprenticeship, being an unlicensed higler, working during divine service, blasphemy, keeping a disorderly house and false weights and measures, whilst a number of those convicted in Quarter Sessions for assault were also fined.

Corporal punishment, in the form of a public or private whipping, was also a much used means of punishing offenders, particularly vagrants. More often than not corporal punishment was administered during or after a term of imprisonment in a house of correction. Only eight offenders, during the period investigated, suffered corporal punishment alone. A further 174 offenders, nearly 20% of all those who received a prison sentence upon their conviction in Quarter Sessions, were whipped and imprisoned, usually for a month. In addition to transportation, fining and corporal punishment there were other means by which the justices could chasten offenders. Military and naval service has already been mentioned, and out of the 2,121 cases examined during the period investigated, 39 offenders were subject to compulsory enlistment, or 1.83%. A further 205 offenders were tied to the restrictions of a recognizance,

1. E. S. R. O. QO/EW 29 PETWORTH 6th OCTOBER
2. BLACKSTONE COMMENTARIES BOOK IV (NEW YORK 1969) pp379-380



this figure representing 9.65% of the total. However, the vast majority of those convicted in Quarter Sessions, almost 60% in fact, were imprisoned for anything from one week to two years. Of those imprisoned a substantial proportion had to undergo additional punishments such as hard labour, solitary confinement or corporal punishment. Since imprisonment accounts for such a large proportion of offenders punished after conviction in Quarter Sessions, and because the state of prisons and houses of correction within the County occupied so much of the time and energy of certain justices towards the end of the eighteenth century, imprisonment and the penal system in Sussex forms the basis of this chapter.

Before undertaking a more detailed examination of the prison system in Sussex at the end of the eighteenth and the beginning of the nineteenth centuries, it is worth stressing that the punishments imposed by the justices in Quarter Sessions were by no means rigid, inflexible and uniform, and that a large measure of discretion accompanied the decisions of the bench with regard to the many offenders brought before it. Traditionally the distinction between a 'felony' and a 'misdemeanour', the former being a major offence and the latter being a minor one, was of great importance. The technical definition of the crime could make a difference as to how the offender was brought to court and, more importantly, how he was punished. Common law felonies came to be defined as acts against the life of a person or against a person's goods - as in larceny or robbery - acts against a person's habitation or acts against public justice such as breach of prison. To these others were added, particularly during the eighteenth century, by various statutes. The class of offences which evolved under the heading of misdemeanours included infringements of

official regulations, negligence by officials holding various offices such as constables or overseers and private matters such as an assault or damage to property. The vital difference between the two major categories of offence from the point of view of the offender was the punishment involved, felonies, with the exception of petty larceny, being punishable by death, and misdemeanours by the secondary punishments discussed. The dividing line between grand and petty larceny, the one a felony and the other a misdemeanour, was 12d. In theory at least, the law was quite clear and the penalties for felonies very harsh.

By the end of the eighteenth century however, in practice if not in form, the distinction between a felony and a misdemeanour meant far less than in previous centuries. Sentences of transportation had replaced the death penalty for a number of felonies and this trend was confirmed, during the first half of the nineteenth century, as the volume of crime designated as 'capital' was reduced. On a local level, crimes such as grand larceny, which by virtue of their status as felonies, would have been more properly heard at the Assizes, were regularly tried before the Sussex bench and unlike the justices of Kent, local magistrates made no attempt to disguise a grand larceny as a petty theft by substituting an artificial value of 10d to the stolen goods. (1) Thus despite the theoretical harshness of the eighteenth century criminal code, and despite the impression of rigidity that surrounded it, by the end of the century the Sussex justices were hearing a bewildering variety of cases, particularly amongst larceny crimes, and punishing those convicted according to some other criteria than the technical definition of the offence.

Numerous examples may be found, in the records of the Sussex Court of

1. ELIZABETH MELLING 'CRIME AND PUNISHMENT'

KENTISH SOURCES IV 1969 p11

Quarter Sessions, of the justices using discretion in cases of larceny and punishing according to a criteria based on something other than the technical definition of an offence or on strict monetary value. In 1784 Thomas Barnet was convicted for the theft of goods valued at a substantial 12/- and an accomplice, George Deacon, was convicted of receiving the stolen goods. Such a theft would usually have been tried in Assize, and a sentence of transportation would not have been inappropriate for the period. Both men however, the thief and the receiver, must have considered themselves fortunate to have escaped with the relatively light sentence of one month imprisonment.(1) In July of the same year Thomas Headley was brought before the Lewes justices, accused of breaking into a dwelling house and stealing goods to the value of 5/-. Headley, upon conviction for petty larceny rather than grand larceny, was whipped and discharged.(2) In October 1784 James Gibson received the same sentence from the Lewes bench for stealing goods to the value of 21/-. (3) In January 1787 Thomas Sinden was brought before the Lewes bench and convicted for entering the residence of the Earl of Ashburnham and stealing goods worth 12/-. A six month sentence in the house of correction followed Sinden's conviction. (4)

The period 1810 - 1820 saw larceny crimes involving property of considerable value brought before the justices in Quarter Sessions and again, surprisingly light sentences passed on offenders who could have warranted prosecution at the Assizes and possibly a sentence of transportation. At the Lewes sessions of October 1816 Mary Anne Toy, a single woman from Brighton, was convicted for the theft of four pairs of cotton stockings, a silk handkerchief and beads valued together at 18/-. The fortunate woman

1. E.S.R.O. QO/EW 27 LEWES APRIL 1784.
2. E.S.R.O. QO/EW 27 LEWES JULY 1784.
3. E.S.R.O. QO/EW 27 LEWES OCTOBER 1784.
4. E.S.R.O. QO/EW 28 LEWES JANUARY 1787.

was ordered to pay a 1/- fine, after which the Court directed that she be 'delivered to her father'. (1) A six week prison sentence for the theft of two hogs, valued at £3.00, was imposed upon James West by the Horsham bench in 1815. (2) Charles Wood, a labourer from Rotherfield, obtained £7.00 by false pretences and found himself before the Lewes justices in April 1819. Upon conviction Wood received a six months prison sentence and a 1/- fine. (3) John Adams, a labourer from Ironfield, cannot have been unduly perturbed by the sentence that followed his conviction, before the Lewes justices, for the theft of goods, again valued at £3.00. Adams was fined 1/- and discharged. (4) Finally, in April 1820, the Lewes justices heard the case of Samuel Tickner, Nicholas Tupper and Richard Brown, all labourers from Lewes. The men were convicted before the bench for the theft of spirits, valued by the Court at a remarkably high £21.00, and upon conviction, were sentenced to six months imprisonment. (5) It would not have been surprising to find any of these offenders before a judge in Assizes, and transported for their respective crimes.

The relatively light sentences described provide a stark contrast to other, much less lenient sentences imposed by the justices on certain offenders. Oliver Poling, a labourer from Burpham, was sentenced to be transported by the Horsham bench, in July 1818, for the theft of a pair of boots valued at 2/-. (6) At the same Quarter Sessions gathering four other offenders, William Bennett, William Hall, Thomas Hunt and John Jenkins, all

1. E.S.R.O. QO/EW 42 LEWES OCTOBER 1816.
2. E.S.R.O. QO/EW 41 HORSHAM JULY 1815.
3. E.S.R.O. QO/EW 43 LEWES APRIL 1819.
4. E.S.R.O. QO/EW 44 LEWES OCTOBER 1820.
5. E.S.R.O. QO/EW 44 LEWES APRIL 1820.
6. E.S.R.O. QO/EW 43 HORSHAM JULY 1818.

labourers, were transported for the theft of one waistcoat similarly valued by the Court at 2/- . (1) Thomas Upton, another labourer, was transported upon conviction before the Lewes justices for the theft of a coat, jacket and shoes valued at 9/- . (2) In January 1820 Stephen Sagley and Henry Hartly were convicted for the theft of five fowls, valued at 1/- each, before the Petworth justices. Both the men were transported as a result of their conviction. (3) The contrast between these more severe sentences and the lighter punishments discussed is accentuated by contrasts often to be found at the same Quarter Sessions meetings. At the Lewes Sessions of January 1820 both Philip Luck and John Hayler were transported for the theft of four fowls, valued at 8/- , whilst Richard Rye was imprisoned for six months for the theft of eight fowls valued at 12/- . (4)

Thus there would appear to be much to support the notion that the justices in Quarter Sessions were influenced as much by such considerations as the circumstances of the crime and the character of the offender as the technical definition of the offence and the value of stolen property. They were willing to apply the penalties available to them with circumspection or severity, as the occasion demanded. An individual's private circumstances may also have had a bearing on the punishment he received since it seems likely, at least as far as the less serious offences were concerned, that a man with a large number of dependants, all likely to be thrown on parish relief, would have a greater chance of securing a shorter prison sentence than the single man with no family responsibilities.

1. E. S. R. O. OP CIT IBID.
2. E. S. R. O. QO/EW 44 LEWES JULY 1820.
3. E. S. R. O. QO/EW 44 PETWORTH JANUARY 1820.
4. E. S. R. O. QO/EW 41 LEWES 15th JANUARY 1820.

Occasionally, the Quarter Sessions records themselves reveal the logic behind a particular decision of the bench. In April 1784 Joseph Harben appeared before the Lewes justices and was convicted for a misdemeanour and imprisoned subject to fulfilling the conditions of a recognizance. (1) Harben appeared before the same group of justices again in April 1785, but this time he was acquitted of causing a nuisance. (2) However, Harben was in trouble again the following July, when he appeared before the Lewes justices on a charge of assaulting and injuring a magistrate. This time he was imprisoned for two months. (3) In January 1786 Harben is again to be found before the Lewes justices, this time for stealing goods to the value of 5/-. The problem of the persistent Harben was finally solved by the Lewes justices who decided that he should be transported for this offence. (4)

The flexibility and range of choice that went with the developments in the County's penal institutions during the last quarter of the eighteenth century provided the justices with the perfect medium in which to exercise the discretion that seems to be so much a characteristic of the decisions of the bench. With the capacity for corporal punishment, solitary confinement in novel separate cells, and at the beginning of the nineteenth century, hard labour through the device of the treadwheel, the justices could administer their punishments as they saw fit, and the technical distinction between grand and petty larceny was rendered virtually meaningless.

At the level of the Assize Courts also, discretion and flexibility seems to have been a central consideration as the higher courts became increasingly

1. E.S.R.O. QO/EW 27 LEWES APRIL 1784.
2. E.S.R.O. QO/EW 27 LEWES APRIL 1785.
3. E.S.R.O. QO/EW 27 LEWES JULY 1785.
4. E.S.R.O. QO/EW 27 LEWES JANUARY 1786.

concerned with the imposition of non-capital punishments during the course of the eighteenth century, which is something of a paradox given the increase in the number of capital statutes. During the reign of George II thirty three capital statutes were added to those already in existence, and a further sixty three were added in the reign of George III. By the end of the eighteenth century an estimated two hundred capital statutes could, at least in theory, send all but the most trivial of offenders to the gallows, though given the composite nature of many capital statutes this figure is little more than an approximation. (1) Sir Samuel Romilly remarked, during a Parliamentary debate on the reform of the criminal law 'There is probably no other country in the world in which so many and so great a variety of human actions are punishable with loss of life as in England'. (2)

However, again, despite the theoretical harshness of the criminal code, it appears in practice to have been interpreted with a great deal of flexibility and latitude, a situation which, as the Advertiser reported, left at least one felon mystified and not a little aggrieved, for we are told:-

Upon arrival of the cart under the fatal tree the Reverend Mr Noyce, the clergyman in attendance, ascended it and began to pray ... requesting the unhappy man to join him, but this Piper refused to do, saying that he was a murdered man and that Pearce was purjured and that he never snapped a pistol at him ... he went on to observe that there

1. RADZINOWICZ L. A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1700 (LONDON) VOL 1 p3

2. QUOTED IN RADZINOWICZ L. OP CIT p107

was no law for a poor man, and referred to a case at our last Assize wherein one prisoner was condemned to death and another, charged with a similar crime, was sentenced to two months imprisonment, and called down heavy vengeance on the heads of his persecutors. (1)

Of the 495 capitally convicted felons recorded for London and Middlesex during the period 1750 - 1760, 281 were actually executed - this figure representing 56.76%. The Period 1789 - 1799 saw a substantial increase in the number of capitally convicted felons to 842. However, the same period saw fewer offenders actually executed, only 237, a fall in percentage terms to 28.14%. (2) The attitude of the legislature may well have been reflected in Paley's contention that:-

There are two methods of administering penal justice. The first method assigns capital punishment to few offences, and inflicts it invariably. The second method assigns capital punishment to many kinds, but inflicts it only upon a few examples of each kind. The latter of which two methods has been adopted in this country ... few actually suffer death whilst the dread and danger of it hang over many. The tenderness of the law cannot be taken advantage of. The life of the subject is spared as far as the necessity of restraint and intimidation permits. (3)

1. SUSSEX WEEKLY ADVERTISER AUGUST 30th 1819
2. RADZINOWICZ L. OP CIT p147
3. HEATH J. EIGHTEENTH CENTURY PENAL THEORY. (O.U.P. 1963) p259-260.



Quite frequently, felons were saved from the gallows by the timely invocation of the pardon, a device which, argues Douglas Hay, reinforced the status of the Gentry. The pardon was important, according to Hay:-

... because it often put the principal instrument of legal terror - the gallows - directly in the hands of those who held power ... It allowed the rulers of England to make the courts a selective instrument of class justice ... Their political and social power was reinforced daily by bonds of obligation on the one side and condescension on the other, as prosecutors, gentlemen and peers decided to invoke the law or agreed to show mercy. (1)

However, apart from the frequent use of the pardon, it also appears that the trend was towards commuting the sentence of a capitally convicted felon to one of transportation or imprisonment. Undoubtedly Beccaria gave form to the sentiments held by many when he noted:-

The death of a criminal is a terrible but momentary spectacle, and therefore a less efficacious method of deterring others, than the continued example of a man deprived of his liberty, condemned, as a beast of burden to repair, by his labour, the injury he has done to society. (2)

Radzinowicz gave some statistical credence to this contention when he noted that, during the period 1761 - 1765, judges recommended that out

1. DOUGLAS HAY 'PROPERTY, AUTHORITY AND THE CRIMINAL LAW' IN HAY ET AL ALBION'S FATAL TREE (PENGUIN) 1977 p48.

2. HEATH OP CIT p134

of a total of 261 capitally convicted felons, 225 sentences be commuted to a period of transportation - usually fourteen years. This he argues, gives 'striking testimony' to the growing realisation that in many instances capital punishment was a penalty ill-adjudged to the gravity of the offence.

(1) The increasing pre-occupation of the Assize courts with non-capital punishments was focused more directly on imprisonment after the outbreak of the American War of Independance in 1775 dealt a paralyzing blow to the authorities in charge of criminal justice. Although the first attempts to find an alternative to transportation may have found temporary success in the provision of hulks, as Michael Ignatieff points out, this expedient was far from satisfactory and it was to the county and borough gaols that the authorities looked to provide a secure and practical answer to the crisis. (2) Although the prison hulks continued to be used to accommodate 'transported' felons long after the conclusion of the American War of Independance, they were not intended to provide the authorities with a permanent alternative to transportation. Quite apart from the more general question of their suitability for the purpose of long term prisons, they were only able to absorb 60% of potential transportees when the American War broke out. Those that remained had to be accommodated in county or borough gaols, along with those sentenced to transportation after the outbreak of war. As a result, argues Michael Ignatieff, 'almost overnight, imprisonment was transformed from an occasional punishment for felony into the sentence of first resort for all property crime'. (3) Botany Bay reopened the opportunity for transportation at the end of the 1780s but figures compiled by Radzinowicz show the extent to which imprisonment was becoming a key weapon in the response of the higher courts to a host of offences. Out of the 2,783 offenders convicted in England and Wales in

1. RADZINOWICZ OP CIT p119

2. IGNATIEFF MICHAEL A JUST MEASURE OF PAIN. THE PENITENTIARY IN THE INDUSTRIAL REVOLUTION. 1750 - 1850 (MACMILLAN 1978) p81

3. IGNATIEFF OP CIT IBID

the Assize courts in 1805 by far the largest majority, 1,680, were sentenced to a period of imprisonment, with a further 595 sentenced to a period of transportation. (1)

Thus, despite a substantial increase in the number of capital statutes that characterize the eighteenth century criminal code, attention became increasingly focused on punishments of a non-capital nature, and upon imprisonment in particular. Other, more general factors may also have served to reduce the number of felons suffering the death penalty. The extent to which juries engaged in the practice of 'pious perjury', and the impact this had on committals to gaols is beyond the scope of this study. Nevertheless Radzinowicz argued that the results of the inquiry undertaken by Buxton at the beginning of the nineteenth century showed:-

... that the common practice of the juries of eliminating capital charges by understating the value of the stolen property was largely responsible for the virtual suspension of the operation of many capital statutes. (2)

Such a trend may well represent a significant shift in public opinion towards a more liberal interpretation of capital statutes, however Michael Ignatieff identifies the often recalcitrant nature of the crowd during the ritual processional and execution - designed as it was as a public spectacle - as a motive for the authorities moving away from this public, mob-orientated performance to the more controlled and less unpredictable punishment of imprisonment. He writes:-

This inversion of ritual, from the solemn act of

1. RADZINOWICZ OP CIT p160

2. RADZINOWICZ OP CIT p95

state to a popular bacchanal, led some eighteenth century observers to doubt the efficacy of public hanging as a deterrent. (1)

The national trend towards the imprisonment of offenders by no means preceded the local practice of imprisonment, which was already well established by the eighteenth century. Of the secondary punishments mentioned, a period of confinement in the county gaol or one of the houses of correction was common. Imprisonment was most often used in cases of grand and petty larceny. Of the 98 prison sentences imposed on offenders during the period 1785 - 1789 a little over 50% were for larceny. Vagrants were also frequently subjected to a period of confinement by the Bench and such offenders account for a further 21% of prison sentences. Those convicted of assault were more usually required to pay a fine but a period of confinement for assault was by no means unusual, with 8% of prison sentences for this period resulting from this kind of offence. Quite often, a short period of confinement was an essential adjunct to corporal punishment since offenders were often detained for up to a month while three or four separate whippings were undergone at various intervals. If such cases are included in the number of prison sentences passed by the Sussex County Quarter Sessions the proportion of prison sentences to other kinds of regular punishment is 50.76% for the period 1795 - 1805 and 1810 - 1820. This figure represents a total of 1077 sentences of imprisonment being passed either with or without another punishment being added to the sentence. To this figure may be added a further 194 offenders who were subjected to a period of confinement

1. IGNATIEFF M. OP CIT p105

until the conditions of their recognizances were met - most often in cases of assault where sureties had to be secured. Thus the traditional role of prisons, as places of temporary confinement for those awaiting trial at Assizes rather than as places of punishment - with the exception of debtors who were the only long term inhabitants of the gaol - no longer applies to this period. By the end of the eighteenth century a term of imprisonment in one of the county's penal institutions was a well established and frequently used response to almost every kind of offence brought before the Sussex justices.

Taking both county gaols and houses of correction together, and including both long and short term offenders of all descriptions, the number of prison sentences imposed by the justices in Quarter Sessions for the periods 1775 - 1790; 1795 - 1805 and 1810 - 1820 may be broken down as follows: During the first period investigated the justices imposed a period of imprisonment of 188 occasions. 103 of these, the vast majority, were confined to the county gaol or one of the houses of correction for a period of less than six months. The period from 1795 - 1805 saw a significant increase in the number of prison sentences imposed upon offenders brought before the justices in Quarter Sessions. During these years the figure for imprisonment amounted to 306. Again the vast majority of these sentences - 197 of them (1) - involved relatively short periods of confinement of less than six months. During this period there was a tendency to punish certain classes of offender, particularly vagrants, with a period of confinement together with a whipping. Thus of the 306 cases of imprisonment recorded, 98 offenders received a short term of imprisonment together with punishment of a corporal nature. 55 of these offenders were noted as vagrants in the gaol calendars and a further 16 were described as having 'deserted wives and families'. In both cases the county had a firm financial incentive to impose relatively rigorous

1. INCLUDING 25 OFFENDERS GIVEN SENTENCES OF BETWEEN 1 week and six months HARD LABOUR.

penalties since the conveying of vagrants and the maintenance of dependants tapped local resources. The parents of bastard children were also not infrequently punished in this way.

The period from 1810 - 1815 saw the number of penal sentences rise still further. During this six year period 272 instances of imprisonment are noted in the calendars - an annual average of 45.33 for this period compared to an annual average of 27.81 for the period 1795 - 1805. Of this number 240 sentences were for a term six months or less in duration and a significant proportion were for a week or two. During these years the bench appears largely to have abandoned the use of corporal punishment, only nine offenders suffered a term of confinement together with a whipping. There is also a marked reduction in the number of offenders whipped and discharged, from 93 during the period 1775 - 1790 to only 8 for the years 1795 - 1805, and none for the period 1810 - 1820. The reduction of the numbers of offenders publicly whipped is certainly in keeping with the ideas of a number of reformers, including Hutcheson and Beccaria, who argued that public spectacles of punishment served only to deprave spectators. The fall in numbers of those undergoing corporal punishment also parallels the development of a fundamentally new prison system in Sussex, based upon the ideas of Howard, and described more fully later. However, it seems likely that the reduction in the use of corporal punishment was as much a result of a temporary change in the policy of the bench with regard to the punishment of vagrants. As the number of vagrants brought before the court increased, particularly after 1795, it appears that the justices often chose merely to remove them to their last legal place of settlement - as in the years 1803 - 1805. A short period of confinement of less than a month was another punishment increasingly imposed upon vagrants and in some cases vagrants were simply noted 'rogues and vagabonds' and discharged.

Persistent vagrants were of course punished more severely. A period of hard labour in excess of six months was also imposed upon 10 offenders during the years 1810 - 1815, up to this time an extremely rare punitive measure.

Given the substantial increase in the number of larceny cases that characterize the post-Napoleonic period it is not surprising to find a corresponding increase in the number of offenders receiving a term of imprisonment. During the five years from 1816 - 1820, 499 offenders underwent a period of confinement as all or as part of their punishment. The pattern of short sentences was continued with 447 offenders receiving a sentence of six months or less. Of this number 154 offenders were imprisoned for a term of one month or less. 52 of the shorter term prisoners were subjected to corporal punishment whilst many others were subjected to a period of solitary confinement for at least part of their sentence. This figure also includes a further 116 offenders punished with a short period of hard labour. The annual average number of offenders sentenced to hard labour during the post-Napoleonic period is 99.8, a little over double the annual average for the period 1810 - 1815. It appears that the justices generally chose to use the expedient of hard labour in preference to whipping during this comparatively active period.

The increase in the number of prison sentences that followed Quarter Sessions convictions, especially during the post-war years, closely parallels the increase in the volume of larceny convictions. Of the 386 larceny convictions recorded for Quarter Sessions during the period 1815 - 1820 311 resulted in a prison sentence of some kind, more often than not with some form of secondary punishment specified. A substantial number of vagrants were also provided with a period of confinement in one of the County's houses of correction, and of the 138 vagrancy

convictions recorded for these years 126, or 91.30%, were punished thus. Male vagrants were frequently whipped during this period. Though offenders convicted of assault were often fined and discharged, or required to provide sureties for good behaviour, 74 out of a total of 112 assault convictions for these post-war years resulted in a prison sentence, this figure representing 66% of the total.

The figures for imprisonment for Sussex during the years investigated are, it should be noted, to a certain extent distorted because they contain a number of vagrants who were merely 'held over' until they could be removed to their last legal place of settlement. On the other hand the figures exclude a substantial number of offenders who were imprisoned until the conditions of their recognizances could be met. But such cases became progressively less frequent during the period with a figure of 154 during the years 1795 - 1805; 32 cases during the years 1810 - 1815 and only 8 during the period 1816 - 1820. It may well be the case that the decline of this category of imprisonment, so closely corresponding to the increase in imprisonment generally, reflects an inability on the part of the authorities to accommodate all classes of offender within the county's gaols and houses of correction. Certainly the overall conclusion is clear. During the period 1775 - 1820 the justices in Quarter Sessions became increasingly dependant upon the punishment of imprisonment, and this method of punishment, often coupled with some other form of secondary admonishment, was deemed to be the most appropriate response to the increasing number of offenders that came before the bench. Though the following figures are subject to variables other than the justices preference for imprisonment or their capacity to carry out this mode of punishment they do reflect an increasing emphasis on internment of one kind or another. During the period 1775 - 1790, 30.56% of offenders brought before the Sussex justices were imprisoned. The period between 1795 - 1805 saw an increase in the



proportion of offenders imprisoned to 33.04%. A further increase in the proportion of offenders imprisoned to 62.81% occurred during the years 1810 - 1815 and this trend continues during the following five years when the proportion of imprisonments to other methods of punishment reached 69.59%. (1)

Offenders subjected to a period of confinement by the justices could find themselves in either the County Gaol or one of the houses of correction sited in various parts of the County. It appears that by the eighteenth century little distinction could be made between these two institutions though traditionally gaols were more closely associated with the punishment or detainment of felons and debtors, whilst houses of correction generally catered for the able-bodied poor, vagrants and the parents of bastard children. The close association between the house of correction and the poor is emphasised by the Webbs:-

They (houses of correction) had as their object, not the punishing of criminals but very nearly what it was afterwards sought to effect by the ordinary poor law workhouse, namely, the elimination of the able bodied idler, vagrant or unemployed from the recipients of what would nowadays be called outdoor relief. (2)

Michael Ignatieff sees in the Elizabethan house of correction the early forerunner of the new penitentiary, within which the first stumbling attempts were made to reform, or at least readjust, the character of

1. REF APPENDIX 9.

2. WEBB SIDNEY AND BEATRICE ENGLISH PRISONS UNDER LOCAL GOVERNMENT. (LONGMANS, GREEN & CO.) p13

the offender. He argues:-

Jails for the confinement of prisoners awaiting trial had existed in the middle ages and limited use had been made of imprisonment as a punishment. But the house of correction was the first European institution to which men were both confined and set to labour in order to learn the 'habits of industry'. It is to this first use of confinement as a coercive education that we should trace the germ of the idea of recasting the character of the deviant by means of discipline. (1)

The reformatory nature of the house of correction was at the heart of Sir Edward Coke's contention that 'Few or none are committed to the common gaol, but they come out worse than they went in ... few are committed to the house of correction but they come out better'. (2) Thus the house of correction was originally intended as a place where individuals seen as inclining towards a 'wantonly idle' disposition might be set to work, in part at least so that they could provide for their own maintenance, and possibly in the hope that the experience might have a beneficial effect upon the character of the inmates therein. By the Act of 1576 (3) houses of correction were required to be erected in all counties and by the terms of this act it was the justices in Quarter Sessions who were to assume responsibility for the maintenance, staffing, regimen and discipline of these institutions. However, it would appear that by

1. IGNATIEFF M. OP CIT p11

2. W.S. HOLDSWORTH A HISTORY OF ENGLISH LAW VOL XI  
(METHUEN 1938) pp567-568

3. 18 ELIZ I, c3

the eighteenth century the initial concept of the house of correction as a corrective institution, distinct as it was from the gaol as a place of detention only, had been generally abandoned. In practice there was little to distinguish the two. The justices it seemed found it administratively more convenient to farm these institutions out, in much the same way as gaols, to keepers, who ran them more or less as a commercial business for their own profit. Of houses of correction in general Howard noted:-

There are few Bridewells in which any work is done, or can be done. The prisoners have neither tools, nor materials of any kind: but spend their time in sloath, profaneness and debauchery, to a degree which, in some cases I have seen, is extremely shocking. (1)

The County gaol provided the justices with the means of securing felons and those waiting trial in addition to debtors and persistent offenders. The picture that emerges of the typical eighteenth century gaol, albeit more often than not penned by those with a keen desire to see the criminal law or the penal system changed, is one of degradation and neglect. Again, to quote Howard:-

There are few prisons, into which whoever looks, at first sight of the people confined, be convinced that there is some great error in the management of them: their fallow meagre countenances declare without words, that they are very miserable. Many who went in healthy are in a few months changed to emaciated, dejected objects. (2)

1. JOHN HOWARD STATE OF PRISONS 3rd EDT 1777 p18
2. HOWARD OP CIT p4

Samuel Johnson was equally condemnatory in his observations on these institutions when he was moved to remark:-

The misery of gaols is not half their evil:  
they are filled with every corruption which  
poverty and wickedness can generate between  
them; with all the shameless and profligate  
enormities that can be produced by the  
impudence of ignominy, the rage of want and  
the malignity of despair. (1)

To recount fully the national state of the prison system during the eighteenth century would serve only to reproduce the abundant information and wealth of detail that has already been published. However, as far as a general summary can be made, the criticisms of Howard and his associates arose partly from architectural and partly from administrative defects.

Inadequate means of sanitation and inadequate provision for light, air and water, made these institutions unhealthy in the extreme. The method of farming gaols to keepers, who made what they could by exactions from prisoners, resulted in general neglect and widespread ignorance of the conditions within the majority of county and borough gaols. The manifestations of both general neglect and maladministration were highlighted in a report made to the justices of Dorset in 1800:-

It appears to this committee that few regulations for the proper government of the gaol were established previous to the year 1793. The gaoler being licenced sold all sorts of liquer to prisoners who resided hither ... the gaol was

1. IDLER VOL 1 No. 38 JAN 1759. IN RADZINOWICZ OP CIT  
p339

ruinous, old, insecure, filthy, unhealthy  
and without separation of the sexes. (1)

This condemnation of prison conditions for the county of Dorset would, it appears, have provided a fairly just indictment of prison conditions nationally.

Of more local significance are the observations of Howard regarding houses of correction and gaols in Sussex. Petworth house of correction undoubtedly helped to shape Howards critical views on the penal system:-

Petworth Bridewell has two rooms ... too  
small for the general number of prisoners.  
No chimney; to glass or shutters up at the  
windows; no court; no water; no employment. (2)

Thus here at least the house of correction had fallen far short of the original conception of such institutions as places of enterprise. Howard was informed by the keeper of Petworth house of correction that 'All his prisoners, upon discharge, were greatly weakened by the close confinement and small allowance'. (3) The justices of the Eastern Division of the County appear to have fared a little better than their Western counterparts for Howard's description of Lewes Gaol and House of Correction is a rather more favourable. Here at least it seems, prisoners were sometimes provided with work and the keeper drew at least part of his income from the County, and was thus partly responsible to the justices in Quarter Sessions rather than a purely private profiteer:-

Here men and women have similar but separate

1. DORSET RECORD OFFICE, REPORT D. COUNTY TREASURER'S ACCOUNTS 1789 - 1834.
2. HOWARD OP CIT pp272
3. HOWARD OP CIT IBID

apartments ... Keeper's salary £ 30,  
fees 6s and 8d, no table. The produce  
of the prisoners work for the three  
years preceeding 1776 was not more  
than twenty shillings a year ... at my  
last visit I found no prisoners at work;  
but there was chalk, mallets, sieves etc  
in the men's workroom and it seems that  
they are sometimes employed in making  
whiting. When they work the keeper has  
all the profits. (1)

Nevertheless, Howard's impressions of the inadequate state of penal  
institutions within the county was certainly not modified by his visit to  
Horsham gaol in 1774, for he notes:-

... the wards are dark, dirty and small, and  
in so way proportioned to the number of unhappy  
persons confined there. There is not the least  
outlet for debtors or felons, but the poor unhappy  
creatures are ever confined with the least breath  
of fresh air - the rooms are too small, except the  
free ward for debtors; no straw, no court and yet  
ground enough for one behind the gaol. (2)

One of Howard's major criticisms of prison conditions was that these  
institutions generally presented a risk to health that made a term of  
confinement for the most trivial offence a possible death sentence. The

1. HOWARD OP CIT pp271
2. HOWARD OP CIT pp352

filthy conditions, overcrowding, poor sanitation and poor structural state of many prison buildings highlighted in his reports undoubtedly contributed to the risk of 'gaol fever', a malignant form of typhus commonly associated with penal institutions. However, it was also felt that the risk to health was compounded by the fact that many prison keepers, with an eye to profit, restricted the supply of bread and other necessities to those inmates with the means to purchase them. The absence of an adequate salary and the opportunities for exaction had attracted to the office of keeper, it was argued:-

... none but the 'low bread', mercenary and oppressive, barbarous fellows, who think of nothing but enriching themselves by the most cruel extortion, and who have less regard for the life of a poor prisoner than the life of a brute. (1)

Indeed, Howard constantly pointed to the poor quality of many prison keepers and their aptness to forget the welfare of their charges in his campaign to persuade his contemporaries of the necessity of a regular and effective system of inspection. He remarked:-

... the care of a prison is too important to be left wholly to a gaoler, paid indeed for his attendance, but often tempted by his passions, or interest, to fail his duty. For every prison there should be an inspector appointed; either by his colleagues in the magistracy or by Parliament ... (2)

1. GENTLEMAN'S MAGAZINE JULY 1767

2. HEATH J. OP CIT p125

Again it appears, Sussex was by no means an exception to the general conditions of neglect and inadequate supervision that Howard found so prevalent. In his report on Petworth house of correction Howard drew attention to the fact that three inmates died during January 1776 and commented:-

... none of them had gaol fever. I do not affirm that those men famished to death; it was extreme cold weather. However, since that time the allowance of bread has doubled. For this the prisoners are indebted to the kind attention of the Duke of Richmond. This prison has caused the death of many poor creatures; but I have now the pleasure to hear that it will soon be discontinued, a new one being under consideration by the justices. (1)

Albery identifies a County gaol at Horsham from 1540, built under 23 Hen VIII c2. (2) Before this, and presumably as a result of the fact that both Surrey and Sussex were under the same High Sheriff from the reign of Edward I to that of Elizabeth I, felons convicted within the County were sent to the Surrey gaol at Guildford. By the Acts of 11 Wm III c19 (1699) and 6 Geo I c19 (1719) justices were given the power to build gaols upon presentment of the Grand Jury at Assize. The work of Howard in highlighting conditions within the country's gaols towards the end of the eighteenth century was to have a considerable impact in Sussex, and his close association with the Duke of Richmond appears to have prompted serious, and costly measures to be adopted in order to effect some

1. HOWARD OP CIT p275
2. ALBERY W. MILLENIUM OF FACTS IN THE HISTORY OF HORSHAM AND SUSSEX (HORSHAM 1947) p328



improvement in the County's penal institutions. The rebuilding of Horsham gaol during the period 1775 - 79, under the influence of the Duke of Richmond, is notable for being carried out in advance of the reforming legislation of the 1780s and for putting into practice the principle of separate cellular confinement for each prisoner.

At various times reference is made in the Quarter Sessions Order Books to houses of correction at Horsham, Arundel, Chichester, Lewes, Battle and Petworth. The house of correction at Lewes, built for the Lewes and Pevensey Rapes, was constructed in 1609. The house of correction at Battle was built sometime before 1647 since the earliest reference to this Bridewell - an order relating to the keeper's salary - appears for the Epiphany session of that year. (1) Petworth house of correction, which came out so badly in Howard's report, was built as a result of a Quarter Sessions resolution of 1625. (2) Although houses of correction were required to be built in each county by the Act of 18 Eliz I c3 1576, these three were probably built under 7 Jas I c4 (1610). Apart from declaring that those confined to the houses of correction should not become a charge upon the county - in other words that they must be made to provide for their own keep - this Act permitted those confined to these institutions to be whipped and loaded with irons, and expressly authorised such penal discipline instead of mere reformatory treatment. Though it may be supposed that such measures were intended to be corrective rather than purely punitive, the 1610 Act was instrumental in lessening the practical distinction between these institutions and county gaols. This distinction was reduced still further by 6 Geo I c19 (1720)

1. THE EAST AND WEST SUSSEX RECORD OFFICES. A DESCRIPTIVE REPORT ON THE QUARTER SESSIONS, OTHER OFFICIAL, AND ECCLESIASTICAL RECORDS. RECORD OFFICE PUBLICATION no. 2 1954 p26

2. E.S.R.O. SESSION ROLL EASTER 1625.

which allowed justices to commit vagrants and other petty offenders, as well as those unable to find sureties, either to the county gaol or to a house of correction as they might think proper. During the course of the nineteenth century, and up to the Prison Act of 1877 which brought all penal institutions under the authority of the Secretary of State (1) even the theoretical distinction between the county gaol and the parish based house of correction was eroded in many counties, including Sussex. In 1845 Lewes house of correction, which since its complete reconstruction in 1793 had served more or less the same purpose as Horsham gaol, was declared a 'common gaol' and after the building of the New Prison in 1854, was passed over to the Admiralty. Petworth house of correction was declared a 'common gaol' in 1843, whilst the house of correction at Battle was closed altogether in 1853, after being used for many years to house short term offenders of all descriptions within the Hastings Rape to save the trouble and expense of transporting them to Lewes or Horsham.

The 1770s appear to have been a particularly active period in the history of penal reform. Undoubtedly on a national level the debate concerning the state of the prisons was fuelled by the writings of Howard and his supporters along with the considerable works of Eden and Blackstone. The increasing use of imprisonment as a punishment, as already suggested, was a more or less necessary precondition to the abandonment of the policy of laissez faire, and the temporary suspension of transportation during the second half of the decade poignantly coincided with the movement towards penal reform. Michael Ignatieff suggests a political, though not

1. 40/41 VICT c21 1877

a 'party' element to the reform campaign of these years when he suggests that the desire to effect penal reform was very much bound up with the desire to highlight 'the administrative incapacity of the Tory Squirearchy'. (1) He notes that it was '... among the Whig Nonconformist reformers that Howard found his most attentive hearing'. (2) Perhaps too, contemporary concern at what was perceived to be the ill effects of prosperity through trade, providing greater temptations for the working man, and the 'ever increasing depravity' of the labouring population, also encouraged many to turn to the New Prisons as a means of re-establishing social control over the working population. Again, Michael Ignatieff argues that many contemporaries saw 'luxury' as responsible for the erosion of a sense of 'civic duty' among the rich and for the creation of a more demanding and materially minded labouring class. He comments:-

In such a climate of loosening moral authority, the increasingly hedonistic rich no longer exercised tutelage over the poor, children no longer obeyed their parents, and apprentices defied their masters ... To many, the times called for a reassertion of social authority, a vindication of the moral legitimacy of the state and a renewed effort to reform the morals of the disobedient poor. (3)

Certainly the idea of the increasing 'degeneracy' of the labouring classes was deeply rooted in contemporary opinion. As early as 1724 Defoe noted:-

Under a stop of trade, and a general want of work, then they are clamorous and mutinous,

1. IGNATIEFF OP CIT p63
2. IGNATIEFF OP CIT IBID
3. IGNATIEFF OP CIT p83

run from their families, load the parishes with their wives and children ... and grow ripe for all manner of mischief, whether public insurrection or private plunder ... In a glut of trade they grow lazy, idle and debauched ... they will work but two or three days in the week. (1)

In a similar vein Henry Fielding, in his influential Enquiry into the Cause of the Increase in Robbers commented:-

... nothing hath wrought such an alteration in this order of people as the introduction of trade. This hath indeed given a new face to whole nation, hath in a great measure subverted the former state of affairs, and hath almost totally changed the manners, customs and habits of people, more especially of the lower sort ... it reaches the very dregs of the people, who aspiring still to a degree beyond that which belongs to them, and not being able by the fruits of honest labour to support the state which they affect, they disdain the wages to which their industry would entitle them; and abandoning themselves to idleness, the more simple and poor-spirited betake themselves to a state of starving and beggary, while those of more art and courage become thieves,

1. THOMPSON E.P. 'PATRICIAN SOCIETY: PLEBIAN CULTURE' JOURNAL OF SOCIAL HISTORY VOL 7 NO4 1974 p383

sharpers and robbers. (1)

These views were again echoed in 1788, when the editor of the sixth edition of Hawkin's Pleas of the Crown noted:-

... the increase of commerce, opulence and luxury ... has introduced a variety of temptations to fraud and rapine, which the legislature has been forced to repel, by a multiplicity of occasional statutes, creating new offences and afflicting additional punishments. (2)

Thus the movement for penal reform, so closely associated with the desire to provide a more rational system of punishment, may well have owed something of its impact to contemporary concern at what many perceived to be the crumbling fabric of social order and the wish to reaffirm the authority of the state by means of the New Prisons. This, in addition to the promptings of Howard and his associates and the practical necessity of re-examining the prison system as imprisonment became the stock response of the judiciary to most offences, provides at least part of the explanation for the interest shown in prison reform during the last three decades of the eighteenth century. However, though the 1770s saw the reform movement given practical substance in the shape of New Prisons erected in various parts of the country, interest in penal reform cannot be confined to this period alone. Even at the beginning of the century Parliament was not entirely indifferent to the defects of the prison system. The death of a debtor in the Fleet aroused the interest of James Oglethorpe, the member for Haslemere, and the matter was brought before Parliament in 1729. As a consequence of Oglethorpe's intervention a Committee of

1. HEATH OP CIT p92

2. HAY ET AL OP CIT p20

Enquiry was appointed, at first to enquire into conditions in the Fleet and Marshalsea, and later into ordinary gaols. Its findings aroused a great deal of public interest, though little in the way of reforming legislation. Subsequent Committees were also constituted in the years 1735, 1751 and 1753 with prisons conditions, either nationally or in specific institutions, forming all or part of their briefs. Parliamentary legislation, though admittedly scant and of limited effect, was also directed at curbing some of the worst abuses of the prison system. Thus in 1751 it was enacted that no licence should be granted for the retailing of spiritous liquors within any gaol, prison or house of correction, and that no gaoler should allow such liquors within his gaol at all except by order of a physician. (1) By a further statute of 1753 prisoners could be housed elsewhere during the re-building of prisons whilst a statute of 1773 allowed for the appointment of salaried chaplains to county gaols. (2) Perhaps more importantly, an Act of 1759 went at least part of the way in relieving the plight of debtors in prison by providing that gaolers should receive from debtors only certain authorised fees. (3)

Such legislation, dealing as it does with specific abuses, appears rather ad hoc and piecemeal and lends support to the Webbs critical indictment of the response of the legislature to the reports on prison conditions produced earlier in the century: 'All that Parliament or the local authorities could bring themselves to do was now and again to propound some futile expedient to palliate a particular evil'. (4) However, Parliament had at least made some attempt to clarify the anomalous position of responsibility for prison administration which existed, to

1. 24 GEO II c40 (1751)
2. 26 GEO III c34 (1753)  
13 GEO IV c58 (1773)
3. 32 GEO II c23
4. S AND B WEBB OP CIT p27

varying degrees, until well into the eighteenth century. Part of the explanation for the appalling state of prisons generally has centred upon the contention that the high sheriffs were neglecting their responsibilities with regard to these institutions, leaving a vacuum which the justices in Quarter Sessions were either reluctant to fill or were to some extent unaware of. Although by the beginning of the eighteenth century many of the high sheriff's duties had become merely ceremonial, with more tangible responsibilities increasingly falling upon the Lord Lieutenant of the County, the Sheriff did in practice retain the keeping of the King's gaol, and responsibility to the King's courts for the safe custody of all those committed to prison. The 'farming' of gaols to Keepers, a popular administrative device that certainly saved the County the trouble and expense of maintaining them, was widespread and high sheriffs who were still actively involved themselves in this field of administration were rare. The manifestations of this system of prison administration on a national level are fully recounted by Howard, who saw the inmates of the County gaols as '... victims, I must not say to the cruelty, but I will say to the inattention of the Sheriffs, and gentlemen in the commission of the peace'. (1) Thus the blurring of administrative responsibility for the gaols that had resulted from the gradual abdication of responsibility on the part of most High Sheriffs invited Parliamentary intervention. The Webbs themselves pointed to the need for a clarification of administrative authority for gaols when they noted:-

Beyond the general obligation to keep the gaols in repair, we cannot find that the Justices of the Peace had any legal duty in the matter. Even more undefined by common law or statute were the responsibilities of the legal owner and nominal keeper of the common gaols of the county,

the high sheriff himself ... (1)

Parliament did initiate the transfer of prison administration from the high sheriff directly to the justices in Quarter Sessions well before the last quarter of the eighteenth century by introducing a series of statutes designed to compel some abatement of the scandal of contemporary prisons. Thus it was that the justices themselves were entrusted, under particular statutes and at the expense of the authority of the high sheriff, successively with the power to rebuild prisons after presentment by the Grand Jury (2) to make tables of maximum fees to be taken from prisoners (3) and to draw up rules for the 'better government of the gaols'. (4)

The movement for penal reform which, under the direction of Howard had such an impact in a number of counties, including Sussex in the 1770s, was thus to a certain extent foreshadowed by these early attempts to provide a system of imprisonment less open to abuse and more directly under the control of local justices. Yet the significance of the 1770s in the history of penal reform should not be underrated, for as Michael Ignatieff notes:-

... the 1770s were not, in an absolute sense, the starting point for the history of the total institution. Yet the sheer quantity of institutional construction in the following two decades entitles us to look upon that period as a moment of decisive acceleration ... for the first time, ideas of reformative

1. WEBB, S & B OP CIT pp11-12
2. 11 & 12 Wm III c19 (1699)
3. 10 ANNE c14 (1711)
4. 32 GEO II c28 (1759)



discipline that had been experimented with  
were put into practice on a large scale, in a  
dozen county institutions. (1)

Such an account of the origins, development and general appeal of the movement for penal reform is necessarily selective, and does not provide an explanation as to why some counties chose to respond to the initiatives of Howard and his associates and why others appear to have made little or no attempt to improve conditions in their prisons. Whatever the more general reasons for the support shown to Howard, whether these were rooted in humanitarian or utilitarian ideals, whether contemporary fear at the increasing 'degeneracy' of the population or the practical necessity of expanding the capacity of penal institutions after 1775 played a part in the development of the reform movement, these do not explain the discrepancies that appear to characterize the implementation of penal reforms from county to county. In Sussex at least it would seem, the initiatives adopted during the last quarter of the eighteenth century were done so very much at the behest of the Duke of Richmond, who had much more than a passing interest in improving prison conditions within the county. Michael Ignatieff points to the significance of the intercession of particular reform minded justices in the implementation of measures for prison reform when he notes:-

By the late 1780s, Howard found that his work  
and the crisis in punishment had called into being  
a small constituency of reform - minded magistrates  
on the county benches. In Middlesex, William  
Mainwaring superintended the construction of a new  
house of correction on the Howard model in Coldbath  
Fields in Clerkenwell. In Dorset, William Morton Pitt

1. IGNATIEFF OP CIT p14

convinced the local bench to build a penitentiary house at Dorchester and put its denizens to work for the local hat manufacturer. Thomas Beever converted the Wymondham bridewell in Norfolk to the principles of penitentiary confinement in 1785. (1)

The influence of the Duke of Richmond in triggering the development of a prison system more akin to the ideas propounded by Howard appears to have been a decisive factor. In 1775, after a presentment by the Grand Jury at Assize that the old gaol at Horsham was '... insufficient both as to the security and health of the prisoners' (2) in accordance with the act of 11 and 12 Wm III c19, which allowed for the rebuilding of prisons after such a presentment, the Court of Quarter Sessions resolved:- '... that the plan produced by the Duke of Richmond for a gaol enclosed in a yard, surrounded by a wall twenty feet high be approved of'. (3) The New Gaol at Horsham was built at an estimated cost of £7000 during the period 1775 - 1779. By nineteenth century standards Horsham gaol was small, consisting as it did of only twenty five cells. More important than the size of the prison however was the nature of the regime imposed upon offenders, being the first to put into practice the new reformatory discipline advocated by Howard. The cells were very sparsely furnished and equipped consisting as they did of 'stone chamber pot, a mop, a broom, a leather bucket, a canvass straw bed and two blankets'. Offenders were stripped, bathed, re-clothed in green and yellow uniforms, and then sealed away. Prisoners usually worked in their cells but were allowed out for two hours a day to exercise or for such visits or purposes expressly authorised by the justices. Their diet consisted of nothing

1. IGNATIEFF OP CIT p97
2. W.S.R.O. OAO/4/WE 1
3. E.S.R.O. SESSION ROLLS 2 OCT 1775

more than water and two pounds of bread per day. A more fundamental, and as it turned out rather more controversial step, was the abolition of the gaolers fees with the keeper, his turnkeys and the prison chaplain being placed on a salary paid in equal proportion by the Sessions of the Eastern and Western Divisions of the County. A justice was appointed as inspector of the gaol. Petworth house of correction was rebuilt on a new site during the period 1782 - 1789, again largely as a result of the persistence of the Duke of Richmond. The justices for the Eastern Division of the County followed this lead in 1793 with the rebuilding of Lewes house of correction. A new house of correction for Battle was built in 1821.

Such a programme of reform was bound to prove costly, not merely because of the expense of erecting these new penal institutions, but also because the upkeep of them fell to the County rather than to the prisoners themselves through the fees they had once paid to the keeper. Again Michael Ignatieff comments:-

Under the old fee system much of the cost of the institutional upkeep had been borne by the prisoners themselves. When reform minded magistrates sought to shift this burden to the county, they found their way blocked by indignant taxpayers. (1)

The high cost of such measures in Sussex are shown by the fact that in 1776 expenditure on Horsham gaol, and Lewes and Petworth houses of correction together, according to the 'orders for payment' given to the treasurer and recorded in the Order Books, amounted to approximately

1. IGNATIEFF OP CIT p98

£240, a figure already increased from previous years by the addition of the gaolers salary. (1) The treasurers accounts for the Eastern Division alone reveal that the Eastern justices authorised payments amounting to a little over £280 for the County Gaol at Horsham during 1801, a figure which of course takes no account whatsoever of the initial cost of re-building. (2) Under such circumstances it comes as little surprise that reforms were not implemented without a measure of controversy. Indignant ratepayers, it seems, remained to be convinced as to the desirability of spending County funds on expensive re-building work. In 1787, at the height of the Petworth house of correction project, a petition to the Western justices declared that 'doubts have been entertained in the minds of many that the County rates have lately been higher than necessary, and some part of the money irregularly, if not illegally raised'. (3) The petition was presented in a lengthy speech from counsel, after which it fell to the Duke of Richmond to defend the expenditure. This was done with some success for the Advertiser reported that the Duke of Richmond rose to his feet and:-

... refuted the arguments of Mr Hurst in a most unequivocal manner. His Grace then entered in the defence of the Magistrates conduct, which he proved most satisfactorily, was not only defensible, but also laudable on the principles of prudence, economy and justice. (4)

The bench too had been divided over the question of the keeper's salary.

1. E.S.R.O. QO/EW 25
2. E.S.R.O. TREASURERS ACCOUNTS QAF/2/1/ES 1800 - 1801
3. SUSSEX WEEKLY ADVERTISER 16th JULY 1787
4. SUSSEX WEEKLY ADVERTISER OP CIT IBID

In 1781 the Eastern justices decided to suspend payments to the keeper of Horsham gaol, Charles Cooper, and instead allow him to revert to the practice of charging fees to inmates. (1) The Western justices, led by the Duke of Richmond, were quick to respond to this retrograde step and urged their Eastern counterparts to reconsider their proposal. In a letter to the 'Justices assembled at Lewes', signed by Richmond and four other magistrates, the question of the legality of paying salaries, which had prompted Howard's excursions from his native Bedfordshire, was answered thus:-

... although there does not appear any statute immediately directing such salaries and allowances for gaols yet it is apprehended that under the Act of 19 Chas 2 Chap 4 sec 2 authorising the justices in sessions to make proper rules for the better government of the gaols and prisons in England under the authority of the justices in Assize these salaries are strictly legal. (2)

To Howard the question of keepers fees was a crucial one and was at the root of the poor state of prisons and the poor health of prisoners. Howard insisted that:-

Gaolers should have salaries proportioned to the trust and trouble; since no office if faithfully and humanely administered better deserves an adequate encouragement: yet not so much to raise them above attention to

1. E.S.R.O. QR/E 608
2. OP CIT IBID

their duty, and the daily inspection of their jails. (1)

On the character of the keeper Howard was equally insistent justices should:-

... find a good man for a gaoler; one that is honest, active and humane ... This officer must be sober himself, that he may, by example, as well as by authority, restrain drunkenness, and other vices in his prison. To remove a strong temptation to the contrary, it is highly requisite that no gaoler, turnkey or other servant be suffered to ... have any connexion, concern, or interest whatever in the sale of liquors of any kind. (2)

The sentiments of Howard were reiterated by the Duke of Richmond and his associates in their remonstrations to the Lewes bench over the question of the Keeper's salary:-

That the regulations allowing a fixed salary to the gaoler and turnkeys in lieu of fees and profits appears of the utmost benefit and advantage and necessary for the good order and management of the said gaol. The good effects of them have fully appeared to the judges of Assize and to every person who has inspected the gaol and it is feared that the discontinuing of such salaries would oblige the gaoler to return to the old, bad practice

1. HEATH OP CIT p213
2. HEATH OP CIT IBID

of selling beer, wine and other articles to the prisoners and to take fees which must fall on the county and partly on individuals unable to pay them and who must suffer further imprisonment until they can pay them. (1)

The Eastern justices were in fact persuaded to reconsider the question of the keeper's salary and the arrangements made at the joint General Sessions of the Peace of Easter 1775 were continued.

Howard wrote with approval of the steps taken by the justices of Sussex, under the direction of their enthusiastic Lord Lieutenant, the Duke of Richmond, to improve the quality of the County's penal institutions. Of the New Gaol of Horsham he noted:-

The Duke of Richmond, in concurrence with other gentlemen in the County, interested himself much in the affair. The situation is judiciously chosen, and the plan is such as appears to me particularly well suited for the purpose ... each felon has a separate room 10 feet by 7 feet and 9 feet high to the crown of the arch. (2)

He concluded:-

... This County has set the noble example of abolishing all fees and also the tap: in consequence of this I found the gaol as quiet as a private house. (3)

1. E.S.R.O. QR/E 608
2. HOWARD OP CIT p271
3. HOWARD OP CIT IBID

Apart from introducing measures which were directed at improving the physical condition of both prison and prisoner during the last quarter of the eighteenth century, the Sussex justices were also at the forefront of a campaign to change the nature of the punishment of imprisonment by providing penal servitude with a more rational basis. On the list of punishments summarised by Blackstone, that had evolved under various statutes up to the mid-eighteenth century Holdsworth comments:-

... it contains abundant traces of barbarities which came very naturally to a primitive society, but which were a disgrace to a more civilised age ... And the punishments inflicted by the law were not only barbaric and archaic, they were quite unsystematic ... In most cases there was little or no attempt to apportion punishment to the magnitude of the crime; and there was no attempt to think out any theory as to the objects at which punishment ought to aim. (1)

Thus it was, at least in part, with the purpose of providing this more rational and systematic basis to the punishment of imprisonment that Howard devised his four guiding principles of: secure and sanitary structure; systematic inspection; the abolition of fees and a reformatory regimen. These four principles were eventually embodied in Parliamentary legislation and formed the basis of 19 Geo 3 c74 which was drafted by Blackstone and Eden (2). Though this act, which amongst other things stressed the need for the development of a system of corrective training, was never wholly implemented it did provide the foundation upon which much subsequent legislation was based, in particular 27 Geo III c58 which

1. HOLDSWORTH OP CIT p556
2. RADZINOWICZ OP CIT pp315-316



related to the rebuilding and reorganisation of gaols and houses of correction in Sussex, and, more importantly 4 Geo IV c64, which was largely accredited to Peel, and which was the first general measure for penal reform to embody Howard's four principles.

Although Petworth house of correction was the first penal institution to be built under the new prison legislation of 1779, the Sussex justices preceeded this and subsequent legislation in the kind of discipline, regimen and regime introduced into the New Prison at Horsham. Besides appointing visiting justices to the gaol, providing for continuous employment, abolishing the Keeper's fees and dividing prisoners into classes based upon the nature and severity of their offence, the Sussex justices implemented the novel principle of separate cellular confinement. Howard had great faith in the capacity of penal institutions to reform inmates if administered correctly:-

The notion that convicts are ungovernable is certainly erroneous. There is a mode of managing some of the most desperate offenders with ease to yourself and advantage to them. Show them that you have humanity, and that you aim to make them useful members of society; and let them see and hear the rules and orders of the prison that they may be convinced they are not defrauded in their provisions or cloths by contractors or gaolers. Such conduct would prevent mutiny in prisons and attempts to escape! which I am fully persuaded are often owing to prisoners being made desperate by the profaness, inhumanity and ill-usage of their

keepers. (1)

On his observation of penal institutions abroad Howard noted:-

The decency, regularity and order that I observed in houses of correction in Holland, Hambourg, Berne, Ghent, Florence ... I am fully persuaded, proceeded, in a great degree, from the constant attention that is paid to impress the prisoners with a sense of religion, by plain serious discourse, catechizing and familiar instruction from the chaplains, together with the influence of a good example, both in them and in the keepers. (2)

To Howard, the careful, cautious use of solitary confinement offered a means through which a prisoner, after a period of solitary reflection, could be brought to acknowledge the error of his ways. He believed that solitude should be broken up by long periods of associated labour and communal exercise and he feared that prolonged and unbroken solitude would break the spirit of the inmates and lead them either into 'insensibility or despair'. It would appear that most contemporary reformers saw solitary confinement as something more than just a more extreme and uncomfortable method of punishing prisoners, unlike the somewhat less compassionate author of Hanging, Not Punishment Enough who, at the beginning of the eighteenth century, besides advocating that men be hanged in chains or whipped to death because ordinary execution had lost all its terrors, also suggested that a prisoner awaiting trial be 'immured in a

1. IGNATIEFF M. OP CIT p73

2. HEATH OP CIT p215

box or cell to himself'. (1) Paley stressed the value of solitary confinement as a method of modifying the behaviour of prisoners when he noted:-

The end of punishment is twofold: amendment and example. In the first of these, the reformation of the criminal, little has been affected, and little I fear is practicable ... of the reforming punishments which have not yet been tried none promises so much as that of solitary imprisonment ... This improvement augments the terror of the punishment, secludes the criminal from the society of his fellow prisoners, in which the worse are sure to corrupt the better ... is calculated to raise up in him reflections on the folly of his choice, and to dispose his mind to such bitter and continued penitence as may produce a lasting alteration in the principles of his conduct. (2)

Romilly too lent his support to the initiatives of Howard and his associates when he wrote:-

A plan for the punishment of criminals has not only been imagined, but has even been adopted by the legislature, which seems wholly unobjectionable. A plan which unites the advantages of a charitable with those of a penal institution, and has in view that important end of punishment, which has been overlooked in almost all our other laws - the reformation of

1. HANGING, NOT PUNISHMENT ENOUGH ANON. IN RADZINOWICZ L. A HISTORY OF ENGLISH CRIMINAL LAW VOL I (1948) pp231-237
2. HEATH OP CIT p258

the criminal: for; at the same time that it promises to subdue the fiercest and most ungovernable spirits by solitary confinement and continued labour, it would be a kind of asylum to that very large description of offenders, who are rendered such by the defects of education, by pernicious connections, by indigence or by despair. These it would keep apart from their infectious companions. (1)

Creating an environment suitable for reflection, and the prevention of the moral contamination of prisoners were the keynotes underlying the introduction of solitary confinement generally. Solitary confinement was also in keeping with the notion of a 'total institution' able to reassert the authority of the state in the fullest possible sense, and would therefore have appealed to those who feared that criminals were challenging the very fabric of society.

The idea of separate cellular confinement so enthusiastically supported by Romilly and Paley, and embodied in legislation by Blackstone, Eden and Howard, was first put into practice as a stock response to criminal activity by the justices of Sussex and under the influence of the Duke of Richmond. However, it is not clear as to the extent to which the Sussex bench saw this mode of punishment as primarily reformatory or punitive. Howard recommended caution in the application of solitary confinement but the Sussex bench, at least in the initial stages of its use, applied the principle with great enthusiasm. The Webbs commented that at Horsham and Petworth:-

'... the novel principles of cellular construction,

1. HEATH OP CIT p270

separate confinement and continuous employment were so vigorously applied that these prisons became the terror of the local criminal population. (1)

By the end of the second decade of the nineteenth century it appears, solitary confinement was applied by the bench much more selectively and its use as a general and integral part of most prison sentences had been abandoned. This change of policy may, at least in part, have been prompted by a report made during a Commons debate on prison discipline in 1816 by one Mr Bennett, who moved for an account of the numbers of prisoners held in Petworth House of Correction because:-

... of the manner in which these persons were confined, which was such as could not fail to meet the reprobation of the House, the prisoners being kept in a state of the most complete solitude, in cells without casements, and without any kind of occupation or mode of passing the time. (2)

Bennett also added that the prisoners were allowed a mere quarter of an hour for exercise in the prison yard and that the 'system of solitary confinement was carried to such an extent, that even during divine service the prisoners were cooped up in wooded boxes, so that no one prisoner could see another'. (3) Already it seems, plans were in hand to modify the regime of complete segregation since Bennett was informed that:-

... the system of solitary confinement arose from

1. S & B WEBB OP CIT p54
2. HANSARD PARLIAMENTARY DEBATES VOL XXXIV. (26th APRIL - 2nd JULY 1816) MONDAY MAY 13th p491
3. OP CIT IBID

the manner in which the prison was built,  
there being no common room. The magistrates  
were however building two rooms of that  
description. (1)

By this period the justices appear to have resorted rather more to the  
devise of hard labour by means of the treadwheel. Treadwheels were  
introduced into Horsham, Petworth and Lewes during the second decade  
of the nineteenth century, and this method of punishing offenders  
appeared to have won the general approval of the bench. In a report to  
the Lewes justices in 1823 the visiting justices appointed to inspect Lewes  
house of correction reported:-

No inconvenience in point of health has arisen  
or appears likely to arise from that mode of  
employment and that they (the visiting  
magistrates) understood from enquiries made  
of the keeper that the number of prisoners  
who, after being subject to that labour, have  
again been committed are very small. (2)

The arrangement of prisoners into classes appears to have been favoured  
rather more than separate cellular confinement for each and every  
prisoner. At Lewes for example the prisoners were arranged into eight  
classes, and frequent association was allowed between the prisoners of  
the same class. The untried were separated from convicted felons, who  
were often placed in solitary confinement for the first two months of  
their imprisonment. Poachers and smugglers were separated from  
vagrants, misdemeanants, female prisoners, those convicted of deserting

1. OP CIT IBID

2. QO/EW LEWES 17th OCTOBER 1823

wives and families and 'common felons'. Of the new house of correction at Lewes the Committee of the Society for the Improvement of Prison Discipline noted in 1821:-

Prisoners here are now arranged into eight classes. Divine service is performed twice a week. The Governor frequently reads to the prisoners, and there is a bible in each and every ward. They are employed in dressing flax, beating hemp, picking oakum; they also make whiting. Not much profit accrues from these employments but the advantage of their being occupied is great. Those committed to hard labour having one sixth, the other prisoners having one half their earnings ... The Governor has frequently received the thanks of gentlemen, for the orderly conduct of persons who have been liberated from this prison ... re-committals are on average six per cent ... (1)

Although Lewes house of correction was administered in a more enlightened fashion than Horsham gaol or Petworth house of correction when Howard conducted his investigations in the 1770s, nevertheless even here the influence of Howard was apparent. In abandoning the use of a rigorous, uncompromising and rigidly enforced policy of solitary confinement it is questionable as to whether the justices were abandoning the

1. THIRD REPORT OF THE COMMITTEE OF THE SOCIETY FOR THE IMPROVEMENT OF PRISON DISCIPLINE AND THE REFORMATION OF JUVENILE OFFENDERS 1821 LONDON  
E.S.R.O. p75-6

basic principles laid down by Howard and his supporters. It would appear that the earlier policy of separate, solitary imprisonment for all but two hours, which was adopted in Gloucestershire and Berkshire as well as Sussex, was exceptional and peculiar to those counties. In moving away from this mode of punishment, whilst still dividing prisoners into classes and applying the principle of separate cellular confinement selectively and for relatively short periods, the justices were I think remaining true to the objectives laid down by Howard. Whether this reassessment of the policy of solitary confinement was inspired by altruism or practical necessity is another question. Certainly the number of offenders sentenced to a period of imprisonment, particularly during the years immediately following the end of the Napoleonic Wars, would have made a rigid policy of solitary confinement virtually unworkable, given the capacity of the County's penal institutions. In a report on Horsham gaol, presented to the bench in 1822, it was reported:-

... There are at present thirty six cells for criminals, they are good as to size, two prisoners or even three are sometimes put into a cell ... (1)

1. 4th REPORT OF COMMITTEE OF THE SOCIETY FOR THE IMPROVEMENT OF PRISON DISCIPLINE. (1811 LONDON E. S. R. O.)

MICHAEL IGNATIEFF ALSO IDENTIFIES OVERCROWDING AS ONE REASON TO EXPLAIN A GENERAL ABANDONMENT OF ISOLATION AS A MEANS OF PUNISHMENT AFTER THE PRECIPITOUS RISE IN COMMITTALS FOLLOWING THE 'STARVATION YEARS' OF 1798 - 1801. IGNATIEFF OP CIT p103



## CONCLUSION

Any investigation that relies to a significant extent on the 'official' records of recorded criminal activity must confront the problems presented by the elusive 'dark figure' of crime. The difficulties of detection, the passive and discretionary nature of methods of prosecution, the undoubted operation of an infra-judicial system of criminal justice and the variability with which offences, particularly those dealt with by summary trial, were recorded combine to render the reliability of documented crime very doubtful. However, it is the case that fluctuations in the level of recorded crime do show very discernable patterns, and these patterns may not be as inexplicable and as incomprehensible as an initial sortie into documented crime might suggest. If, as seems to be the case, the Court of Quarter Sessions did not present to the potential prosecutor a formidable and virtually inaccessible means of seeking redress and if, as recent evidence suggests (1) the fluctuations in the level of recorded crime were not primarily the result of such developments as Parliamentary rewards and the provision of prosecutor's expenses or the establishment of local prosecuting societies, then it is perfectly valid to draw upon the relationship between documented crime and local social and economic conditions to enhance our understanding of criminal behaviour.

The criminal business of the Sussex Court of Quarter Sessions, for most of the period investigated, extended to the hearing of quite substantial grand larceny offences, in addition to the more usual catalogue of petty

1. Peter King 'Prosecutions, courts and community concerns in Essex 1790 - 1800' unpublished paper given at a conference on the History of Law, Labour and Crime, University of Warwick, September 1983. See also, Douglas Hay, 'War, Dearth and Theft in the Eighteenth Century'. 'The Record of the English Courts'. Past and Present. No 95 May 1982

larceny charges and minor misdemeanours. The most significant characteristic of recorded larceny focuses upon the substantial upturn in this kind of criminal activity in the years immediately following the end of the Napoleonic Wars. In explaining this general departure from the more regular pattern of theft a number of possibilities seemed worthy of investigation. Firstly, if fluctuations in the price of grain provide a valid indicator as to the changing social and economic 'health' of a local community, and if high grain prices had the effect of bringing significant numbers of people to a state of real need and despair, then the relationship between the level of documented larceny and the price of wheat deserves careful consideration. To examine recorded crime as a 'positive' record of the behaviour of the populace and not merely as a result of changes in the 'criminal justice system' embraces Douglas Hay's contention that 'officially recorded crime must be the net result of both the behaviour of those subject to the law and those controlling it'.  
(1)

Secondly, at the other end of the spectrum, changes in the nature of the 'system' of criminal justice, such as changes in the criminal law or the provision of rewards for prosecution, in addition to 'private' measures directed at easing the burden of prosecution which invariably befell the victim, may also have served as a stimulus to recorded criminal activity.

With regard to grain prices however, it was certainly not the case that high prices resulted in a significantly larger number of people being indicted and brought before the bench for theft. The bursts of high grain prices during the last decade of the eighteenth century, and subsequently

1. Hay D. 'War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts', Past and Present  
No 95 May 1982. p158

during the prolonged period of war, did not push the rural population of Sussex to the brink of criminal behaviour and beyond. It seems unlikely too that the various private and state initiated schemes designed to stimulate or facilitate the process of detection and prosecution would have had a significant impact upon the volume of larceny offenders brought before the justices. Peter King, in his examination of Essex prosecuting associations, concludes:-

Parliamentary rewards and the provision of expenses payments to prosecutors were not especially successful in persuading victims to initiate judicial proceedings in the eighteenth century. The smaller rewards offered by prosecution associations were equally ineffective in encouraging non-members to become involved while the subscribers themselves appear to have shown little inclination to change their discretionary habits when dealing with offenders ... (1)

J.M. Beattie was equally doubtful as to the importance of prosecuting associations when he wrote:-

My impression of such organisations ... is that they were short lived, that they were supported by those wealthy enough to prosecute on their own, and that they probably did not have a very great impact on the numbers of

1. PETER KING OP CIT p31 - 32

offenders charged ... (1)

The evidence for Sussex suggests a firm relationship between Quarter Sessions larceny indictments and the agricultural depression that characterized the post-war years. The County's agricultural base was fundamentally weak, but the decline of alternative industries had pushed agriculture to the economic forefront - a process given great impetus during the temporary prosperity of the French Revolutionary and Napoleonic Wars. The disruption of agriculture during the aftermath of prolonged war was as sharply felt here as anywhere, and the detrimental state of the labour market brought problems of under-employment and unemployment more directly into focus. Undoubtedly, returning ex-servicemen heightened competition in the labour market, and in all probability contributed directly to the increase in certain categories of crime, but the economic conditions which may have militated against a smooth return to civilian life had a more general impact upon the indigenous, indigent population, who turned to theft in greater numbers. The years of high prices certainly honed the machinery of both formal and, more importantly, informal charity and the worst effects of temporary shortage were cushioned. The longer term difficulties presented by a contracting market for labour required a more inveterate and durable solution and could not be dealt with on the same basis.

Offenders brought up under the various statutes relating to game feature quite prominently in the criminal work of the magistracy, though such offenders were much more likely to have found themselves before an individual magistrate facing summary trial than before the full county bench in Quarter Sessions. It is possible that summary trial for game

1. BEATTIE J.M. 'JUDICIAL RECORDS AND THE MEASUREMENT OF CRIME IN EIGHTEENTH CENTURY ENGLAND' KNAFLA A., CRIME AND CRIMINAL JUSTICE IN EUROPE AND CANADA. WATERLOO, ONTARIO, 1981 p133

law offenders proved more reliable, and was therefore viewed more favourably by those wishing to see the game code effectively enforced, than the more open proceedings of Quarter Sessions. It is equally likely that the addition of large numbers of game law offenders to those facing trial before the justices in Quarter Sessions, particularly during the post-war years when recorded game law convictions were at their highest, would have placed an intolerable strain on the criminal machinery of the court. The development of this branch of summary justice is certainly commensurate with the transfer of a good deal of administrative business to the single justice of the peace.

Convictions under the game laws, like those for larceny, show a substantial post-war increase and this suggests that the pattern of theft and that of poaching were to an extent dictated by similar conditions. However, the limited evidence of Quarter Sessions game law convictions suggests a strong regional variation in the level of such offences, with the 'closed' parishes of the south-west featuring much more prominently here than the 'open' Wealden parishes.

Of the non-property offences brought before the justices in Quarter Sessions vagrancy and assault were the most frequently recorded. It is very unlikely that justices acting out of sessions would not have encountered very many instances of both assault and vagrancy and it is equally unlikely that all such offenders - regardless of the circumstances or seriousness of the offence - would have been brought before the full Court of Quarter Sessions. If the informal 'arrangements' of the justices acting out of sessions had been subject to the same methodical documentation as certain other branches of the system of criminal justice, then one would certainly expect to see instances of minor assault and simple vagrancy featuring at the forefront of such records. Once assault cases had been brought before the justices

in Quarter Sessions there was a marked tendency to deal with these offenders less harshly than those brought up on property crimes. Though there was a general increase in the number of assault convictions during the years examined, the dramatic increase in post-war property crime was not reflected in assault convictions to the same extent. The depression of the post-war years did not lead to a *prima facie* increase in simple communal violence.

The level of Quarter Sessions vagrancy convictions remained consistently high for most of the period investigated and concern at the level of vagrancy was a constant theme in the orders of the County bench to local parish officers. Certainly the punishments imposed on many vagrants - both male and female - reflect the irritation with which the justices viewed the County's transient population. The figures for vagrancy, perhaps more than any other category of 'crime', were in all probability as much the result of measures of 'control' and the efficiency of the local officials in dealing with such offenders as any other single factor, given that the impetus for bringing vagrants to court came from within the local judicial and administrative machine rather than outside it. Thus the relatively stable post-war vagrancy level may be seen as a result of a greater degree of flexibility on the part of local officials during a prolonged period of depression, or as the result of a general disinclination on the part of the poor to leave the relative security of their parish of settlement. The point remains however, that vagrants were regarded by the bench as more than just an administrative problem and that many such offenders were punished as severely as any other category of criminal.

A more general point which is perhaps worth underlining is that women were much less active participants in both property crime and crimes against the person than men. Theft particularly was dominated by male offenders and the post-war depression had little impact upon female

larceny. Such a situation may well say more about the social constraints facing women in a rural community than any other single factor.

The Sussex justices were at the forefront of the late eighteenth century movement for penal reform, and by the turn of the century they had turned imprisonment within the County from an unsystematic, random and equivocal mode of punishment into a more rational and systematic punitive measure. Although the County bench continued to use a wide variety of measures to deal with offenders, from transportation to the simple fine, imprisonment became the standard response to most kinds of offence committed within the County and in particular for grand and petty larceny offenders. The punitive policy of the justices in Quarter Sessions was characterized by a substantial degree of flexibility and discretion, which was enhanced rather than diminished by the new penal measures implemented by the bench. The technical definition of an offence or such considerations as the value of stolen property did not dictate the severity of the punishment imposed by the justices, who seemed to have paid at least as much regard to the record of an offender and in all probability his 'character', family responsibilities and the circumstances of the offence. In short, the 'delicacy and circumspection' that Douglas Hay identifies as being so crucial to the ideological function of the eighteenth century criminal code was plainly visible in the commonplace dealings of the justices in Quarter Sessions.

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QO/EW 27	January 1782- Feb. 1785	" " " "
QO/EW 28	April 1785-Dec. 1787	" " " "
QO/EW 29	January 1788-July 1790	" " " "
QO/EW 30	July 1790-January 1793	" " " "
QO/EW 31	January 1793-Nov. 1795	" " " "
QO/EW 32	January 1796-April 1798	" " " "
QO/EW 33	July 1798-July 1800	" " " "
QO/EW 34	July 1800-January 1802	" " " "
QO/EW 35	January 1802-Jan. 1804	" " " "
QO/EW 36	January 1804-Oct. 1805	" " " "
QO/EW 37	October 1805-July 1806	" " " "
QO/EW 38	July 1806-June 1808	" " " "
QO/EW 39	July 1808-October 1810	" " " "
QO/EW 40	October 1810-Jan. 1813	" " " "
QO/EW 41	January 1813-July 1815	" " " "
QO/EW 42	July 1815-April 1817	" " " "
QO/EW 43	July 1817-April 1819	" " " "
QO/EW 44	July 1819-July 1821	" " " "

QR/E 583 - QR/E 765

#### Quarter Session Rolls

QO/EW 9

#### Indictment Books

QAF/2/1/ES

#### Treasurer's Accounts

QM/EW 12 - 16

#### Minute Books

QP/EW 2 - 6

#### Process Books



QAP/2/E1 - 3	Lewes County Gaol and House of Correction
QAP/2/E10 1 - 2	" " " " " "
QAP/2/E11 - E14	" " " " " "
QAP/3/E5/ 1 - 2	Battle House of Correction

West Sussex County Record Office

QR/W 529 - 717	<u>Quarter Session Rolls</u>
QAP/4/WE 1	Horsham Gaol
QAP/4/2/ WE 2 - 4	" "
QAP/4/WE 3	" "
QAP/5/W1	Petworth House of Correction
QAP/5/W2 1 - 6	" " " "
QAP/5/W 15	" " " "

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Appendix 1.

(Quarter Sessions)

Table A.Cases Presented at Quarter Sessions 1775-1790

	<u>No. of Cases presented.</u>	<u>Convictions.</u>	<u>Ref to later Sessions.</u>	<u>Ref to Assize</u>	<u>Acquitted/ discharged.</u>
1775	36	21	2	0	13
1776	28	13	1	1	13
1777	17	12	0	0	5
1778	37	18	2	0	17
1779	38	28	6	0	4
1780	31	17	4	1	9
1781	43	25	2	0	16
1782	37	22	3	3	9
1783	51	28	10	1	12
1784	69	49	8	1	11
1785	78	56	3	1	18
1786	69	65	3	0	1
1787	97	81	3	0	13
1788	67	55	6	1	5
1789	104	74	15	3	12
1790	87	61	17	0	9
Total	889	625	85	12	167

Appendix 1 cont/-

(Quarter Sessions)

Table B.

Cases Presented at Quarter Sessions 1795-1805

<u>No. of Cases Presented.</u>		<u>Convictions</u>	<u>Acquittals.</u>	<u>Discharged.</u>	<u>Ref QS</u>	<u>Ref Assize</u>	<u>Ref Petty</u>
1795	103	75	18	4	6		
1796	90	63	17	1	9		
1797	76	56	15		3	2	
1798	116	98	16		1	1	
1799	99	77	13	2	7		
1800	120	95	16	1	8		
1801	117	91	18		7	1	
1802	82	52	19		11		
1803	156	122	14		19	1	
1804	117	87	25		5		
1805	167	139	12		16		
Total	1243	955	183	8	92	5	

FIGURES BY DIVISIONS.

<u>Eastern Division</u>				<u>Western Division.</u>		
<u>Cases Presented.</u>	<u>Convictions.</u>	<u>Acquitted.</u>		<u>Cases Presented.</u>	<u>Convictions.</u>	<u>Acquitted.</u>
1795	73	55	11	30	20	7
1796	53	41	7	37	22	10
1797	41	32	6	35	24	9
1798	75	67	8	41	31	8
1799	50	39	7	49	38	6
1800	69	63	5	51	32	11
1801	68	54	9	49	37	9
1802	58	38	14	24	14	5
1803	121	106	10	35	16	4
1804	62	56	5	55	31	20
1805	128	106	8	39	33	4
Total	798	657	90	445	298	93



Appendix 1 cont/-

(Quarter Sessions)

Table C.

Cases Presented at Quarter Sessions 1810-1820

	<u>No.of Cases</u>	<u>Convictions</u>	<u>Acquittals.</u>	<u>Discharged.</u>	<u>Ref</u> <u>QS</u>	<u>Ref</u> <u>Assize</u>	<u>Ref</u> <u>Petty</u>
1810	98	59	22	3	14		
1811	85	60	13	1	11		
1812	112	78	19		13	2	
1813	130	96	14	15	5		
1814	85	64	11		10		
1815	118	85	7	3	23		
1816	133	81	32		20		
1817	172	116	36	1	19		
1818	214	162	38	3	11		
1819	238	195	26	8	7	2	
1820	217	170	31	8	8		
<u>Total</u>	<u>1602</u>	<u>1166</u>	<u>249</u>	<u>42</u>	<u>141</u>	<u>4</u>	

FIGURES BY DIVISIONS.

<u>Eastern Division</u>				<u>Western Division</u>		
<u>Cases Presented.</u>		<u>Convictions.</u>	<u>Acquitted.</u>	<u>Cases Presented.</u>	<u>Convictions.</u>	<u>Acquitted.</u>
1810	70	43	14	28	16	8
1811	64	45	8	21	15	5
1812	84	61	14	28	17	5
1813	80	59	6	50	37	8
1814	55	39	9	30	25	2
1815	88	62	4	30	23	3
1816	87	51	22	46	30	10
1817	109	76	17	63	40	19
1818	127	97	22	87	65	16
1819	159	136	14	79	59	12
1820	130	100	18	87	70	13
<u>Total</u>	<u>1053</u>	<u>769</u>	<u>148</u>	<u>549</u>	<u>397</u>	<u>101</u>

APPENDIX 2

(Quarter Sessions)

Quarter Sessions Convictions - 1775 - 1790

Table A.

	1	2	3	4	5	6	7	8	9
1775	0	3	8	0	0	0	1	3	1
1776	0	1	2	0	0	0	1	0	1
1777	0	3	3	2	0	0	1	0	0
1778	0	6	2	2	0	1	1	0	3
1779	0	5	7	11	0	0	1	0	3
1780	2	4	2	2	0	0	4	3	0
1781	3	5	6	9	0	0	1	1	0
1782	2	1	2	1	1	3	4	6	0
1783	6	3	4	0	3	0	2	9	0
1784	5	6	17	0	9	0	5	6	0
1785	8	3	8	5	19	1	2	8	0
1786	13	8	12	9	5	0	3	10	0
1787	4	8	15	29	8	0	5	12	0
1788	6	7	14	15	0	0	2	11	0
1789	5	5	12	20	0	7	2	10	0
1790	5	8	12	17	0	1	5	5	1
Total	59	76	126	122	45	13	40	84	9

Others 51.

1. Grand Larceny.
2. Petty Larceny.
3. Assault.
4. Vagrancy.
5. Nuisance/Misdemeanour.
6. Collective Acts of Defiance.
7. Deserting dependants.
8. Bastardy.
9. Sureties.

Appendix 2 cont/-

(Quarter Sessions)

Table B.      Quarter Sessions Convictions 1795-1805 and 1810-1820

	1	2	3	4	5	6	7	8	9	10	11	12
1795	3	5	19	16	10	4	3	11				4
1796	9	13	5	11	14		2	8				1
1797	16	3	6	14	4			12				1
1798	11	10	11	28	1	7	2	23	4	1		5
1799	17	4	13	26	5	3		7				2
1800	10	12	11	26	12	2		14				8
1801	21	8	11	31	8			10				2
1802	7	2	11	20	3		3	6				2
1803	13	5	5	71	2		11	9	4			2
1804	10	4	8	50	2	2	2	9				
1805	26	11	13	73	2	2	3	5	2	1		1
1810	7	1	18	11	1		2	12		1		6
1811	16	2	12	15	2		2	5		3	3	6
1812	19	6	10	33	5					1		4
1813	21	12	17	37				1	2	3		3
1814	16	6	14	19	3	2				2		2
1815	29	3	19	29			2			1		2
1816	29	11	12	16	6	2	2			1		2
1817	42	10	9	26	4		3	3	1	9	5	4
1818	68	18	20	24	4		12	1	2		7	6
1819	72	29	35	20	12		2		1	3	3	5
1820	57	18	26	23	2	7	16	9	3	1	2	6
Total	519	193	305	619	102	31	67	145	19	27	20	74

1. Grand Larceny.
2. Petty Larceny.
3. Assault.
4. Vagrancy.
5. Nuisance/Misdemeanour.
6. Collective Acts of Defiance.
7. Deserting dependants.
8. Bastardy.
9. Counterfeit.
10. Fraud/False pretences.
11. Game Laws.
12. Others E.G. Sureties etc.

Appendix 3

(Quarter Sessions)

Gaol Calender Convictions

Table of Quarter Sessions Punishments 1775-1790

	1	2	3	4	5	6	7	8	9	10	11	12	13
1775	0	0	6	0	0	0	0	1	8	6	0	0	0
1776	0	0	0	0	2	0	0	1	1	9	0	0	0
1777	0	0	1	1	0	0	0	1	5	4	0	0	0
1778	0	1	1	0	0	0	1	1	6	5	3	0	0
1779	0	4	4	0	0	0	3	0	10	5	0	0	2
1780	2	1	1	0	1	1	2	2	3	4	0	0	0
1781	0	1	6	5	0	0	3	1	6	3	0	0	0
1782	0	0	0	0	6	0	3	1	0	10	0	0	2
1783	5	0	3	0	1	0	0	4	3	11	0	0	1
1784	2	0	6	1	3	0	0	13	6	18	0	0	0
1785	2	0	5	1	6	0	0	3	26	10	0	0	3
1786	1	0	3	8	3	1	0	4	13	29	0	0	3
1787	6	0	26	9	0	3	5	8	1	21	0	2	0
1788	3	0	11	6	0	1	0	7	0	14	4	0	9
1789	0	0	15	6	0	0	0	23	4	16	0	0	10
1790	2	1	15	10	0	2	2	15	1	7	3	1	2
Total	23	8	103	47	22	8	19	85	93	172	10	3	32

1. Transported.
2. Imprisonment - 7 months or over
3. Imprisonment - 6 months or less
4. Imprisonment - 0-6 months plus whipping
5. Imprisonment - 0-6 months hard labour
6. Imprisonment - 7 months or over hard labour
7. Military/Naval service.
8. Fine.
9. Whipped and discharged -(includes some imprisoned until sentence can be carried out)
10. Imprisoned until conditions of recognizance are met.
11. Recognizance
12. Transportation commuted to hard labour
13. Removed.

Appendix 3 Cont/- (Quarter Sessions)  
Gaol Calendar Convictions Table B

Table of Quarter Sessions Punishments 1795-1805 and 1810-1820

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1795		1	8			1	6				12	15	30			2
1796	2		8			2	13			2	6	17	10	1	2	
1797	5	1	2			1	11				13	5	16		1	1
1798	4	2	15			1	7			2	24	6	33		1	3
1799	3		24				12				21	10	7			
1800	1		22			3	10	2			17	15	13	3	4	5
1801	6	1	18				9			2	28	11	14			2
1802	1		7				6			4	20	7	5			2
1803	1	2	14			5	11			1	69	7	10			2
1804			18			8	2			9	31	5	10			4
1805	2	2	36		1	3	11			5	53	12	6			8
1810			9	7			1			1	4	20	16			1
1811			3	16	8	4	3				10	10	5			1
1812	3		3	19	13	4	1	1	4	7	7	8	1	1		6
1813	2		7	25	24	1	1	1	2	1	17	7	6			1
1814	1		23	22			1	2	1	1	2	7	3	1		
1815	2		20	27			1		4	17	1	12	1			
1816	1		3	17	22		3	4		14	6	9				2
1817	11		6	24	39		4	2	1	8	4	8	3	5		1
1818	20		3	22	33		9	2	5	40	10	17				1
1819	26		9	32	17		27	5	4	31	8	35				1
1820	16	4	30	43			9		4	23	17	17	5			2
	107	47	409	255	10	29	154	20	24	168	380	260	194	11	8	45

- |  |                              |
|--|------------------------------|
| 1. Transported                         | 9. Hard Labour 7 mths plus * |
| 2. Imprisonment 7 months plus          | 10. Hard Labour 0-6 mths     |
| 3. Imprisonment 2-6mths (0-6 pre 1810) | 11. Removed                  |
| 4. Imprisonment 0-1mth *               | 12. Fine                     |
| 5. Military Service                    | 13. Imp/Recog                |
| 6. Naval Service                       | 14. Recognizance             |
| 7. Imprisonment 0-6 mths plus whip     | 15. Whip                     |
| 8. Imprisonment 7 mths plus whip       | 16. Others.                  |

\* From 1810 only

Appendix 4

(Petty Sessions)

Petty Sessions Convictions filed at Quarter Sessions.

Table A 1775-1790

	1	2	3	4	5	6	7	8	
1775	0								
1776	3		1			1		1	
1777	3		1			1		1	
1778	7				3	3		1	1. No. of Cases.
1779	0								2. Appropriation
1780	0								3. Convictions under Game Laws.
1781	1					1			4. Smuggling.
1782	1	1							5. Economic - Weights & Measures
1783	12	2	5			4		1	6. Social Code (Drunk, Disorderly)
1784	16	7	8					1	7. Vagrancy: Deserting: Bastardy
1785	12	3	5		1	3			8. Misdemeanour: Nuisance
1786	20	3	7		3	1		6	
1787	25	15	7			2		1	
1788	21	2	9	2	8				
1789	11	7	3			1			
1790	5	2	3						
1795	18	3	4	6					5 Table B 1795-1805 and 1810-1820
1796	0								
1797	0								
1798	1						1		
1799	0								
1800	0								
1801	0								
1802	0								
1803	23	1	13		3	1		5	
1804	18	1	13					4	
1805	30	4	15	2	1			8	
1811	33	1	16		6		2	8	
1812	45	3	8		17		7	10	
1813	52	2	14		1		9	26	
1814	45	6	27		4	4	4		
1815	45		36		2	2	5		
1816	71	2	62		1		2	4	
1817	54		45		3		6		
1818	73		47		6	3	15	2	
1819	49	7	34	2	2		2	2	
1820	56	5	46		1		4		
TOTAL	750	77	429	12	62	27	57	86	

Appendix 5

(Indictment Books)

INDICTMENTS: 1775-1789

Table A.

	1	2	3	4	5	Total
1775	7	9	1			17
1776	13	9	1		2	25
1777	8	19	3			30
1778	13		8			21
1779	9	22			8	39
1780	9	10	4		1	24
1781	9	9	2	10	4	34
1782	6	3	4	4	2	19
1783	16	17	5		7	45
1784	18	26	8		4	56
1785	32	9	22		1	64
1786	30	13	7		2	52
1787	26	24	4	3	10	67
1788	19	11	4	1	1	36
1789	19	16	17	18		70
<u>234</u>	<u>197</u>	<u>90</u>	<u>36</u>	<u>42</u>	<u>599</u>	

1. LARCENY.

2. ASSAULT.

3. NUISANCE/MISDEMEANOUR.

4. RIOT.

5. OTHERS: INC:- 4 UNLAWFUL IMPRISONMENT - (1789)

10 RECEIVING STOLEN GOODS - (1782,3,4,6)

9 SMUGGLING - (1776& 87)

3 ATT. RAPE }

3 ATT. MURDER }

8 EXTORTION - (1799)

Appendix 5 cont/-

(Indictment Books)

INDICTMENTS 1775-1789

<u>INDICTMENTS MALE/FEMALE</u>							<u>Table B.</u>				
	1		2		3		4		5		
	M	F	M	F	M	F	M	F	M	F	Total
1775	4	3	9		1						17
1776	9	4	9		1				2		25
1777	5	3	16	3	2	1					30
1778	12	1			8						21
1779	5	4	20	2					8		39
1780	8	1	10		4					1	24
1781	7	2	8	1	2		10			4	34
1782	5	1	3		3	1	4		2		19
1783	14	2	14	3	5				5	2	45
1784	18		26		7	1			4		56
1785	31	1	9		20	2			1		64
1786	25	5	13		7				1	1	52
1787	22	4	24		4		3		10		67
1788	17	2	9	2	4		1		1		36
1789	18	1	13	3	13	4	18				70
Total	200	34	183	14	81	9	36		34	8	599

1. GRAND/PETTY LARCENY.
2. ASSAULT.
3. NUISANCE/MISDEMEANOUR.
4. RIOT.
5. OTHERS. (Ref. Table A)



Appendix 6

(Quarter Sessions)

Proportion of Male to Female Convictions at Quarter Sessions1795-1805 & 1810-1820

	Grand Larceny		Petty Larceny		Assault	
	M	F	M	F	M	F
1795	2	1	5		16	3
1796	8	1	9	4	5	
1797	15	1	2	1	6	
1798	10	1	6	4	11	
1799	17		4		13	
1800	9	1	12		11	
1801	17	4	7	1	11	
1802	6	1	2		9	2
1803	9	4	5		3	2
1804	9	1	3	1	7	1
1805	24	2	10	1	13	
1810	2	5	1		17	1
1811	8	8	1	1	10	2
1812	17	2	4	2	9	1
1813	20	1	10	2	14	3
1814	15	1	6		10	4
1815	28	1	3		19	
1816	25	4	9	2	9	3
1817	40	2	10		9	
1818	65	3	14	4	18	2
1819	68	4	23	6	31	4
1820	51	6	18		24	2
Total	465	54	164	29	275	30

Appendix 7

(Quarter Sessions)

Social Breakdown of Quarter Sessions Convictions 1810-1820

Table 1      LARCENY (MALE)

	1	2	3	4	5
1810	3				
1811	7	1	1		
1812	21				
1813	28	2			
1814	21				
1815	29				2
1816	34				
1817	50				
1818	78	1			
1819	90	1			
1820	69				

Table 3      LARCENY (FEMALE)

	1	2	3	4	5
	2	1			2
		5	3		1
		3		1	
		3			
				1	
					1
	2	2			2
					2
		3		2	2
	1	4	1		4
	3	2			1

Table 2      ASSAULT (MALE)

	1	2	3	4	5
1810	7	3	2		5
1811	6	3		1	
1812	2	2	1		4
1813	5	2	1		6
1814	4	3			3
1815	9	5		1	4
1816	4	3	1		1
1817	3	2			4
1818	11	2	1		4
1819	21	4	2		4
1820	15	4	1		4

1. LABOURERS.
2. SKILLED/SEMI SKILLED WORKERS.
3. YEOMAN/SHOPKEEPERS.
4. GENTLEMEN.
5. OTHERS/UNSPECIFIED.

1. SPINSTER.
2. SINGLEWOMAN.
3. MARRIED.
4. EMPLOYED.
5. OTHERS/UNSPECIFIED.

Appendix 8

(Quarter Sessions)

PATTERN OF CRIME 1810-1820

## Classification of Stolen Goods.

	1	2	3	4	5
1810		1	2	5	
1811	5	1	5	5	2
1812	7	6	7	4	1
1813	11	7	9	4	2
1814	9	7		5	1
1815	8	10	5	6	3
1816	19	3	7	8	3
1817	10	7	17	11	7
1818	29	7	16	28	6
1819	49	9	16	21	6
1820	28	14	10	15	8
	175	72	94	112	39

492

1. UTILITY (i.e. tools/equipment)
2. LIVESTOCK.
3. FOODSTUFFS.
4. CLOTHING.
5. VALUABLES/LUXURY GOODS.

# Appendix 9.

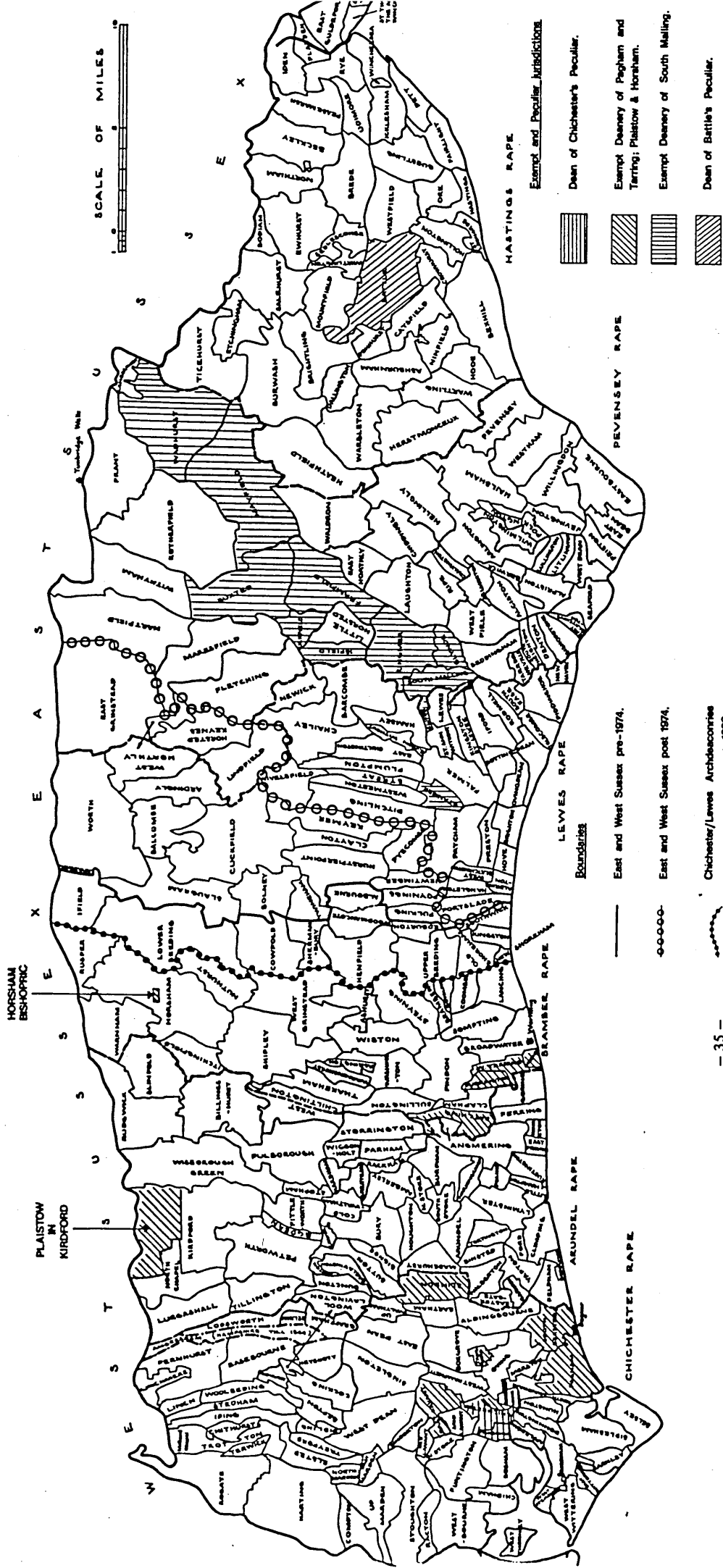
## Punishments.

Total number of punishments given in gaol calenders between  
1795-1805 and 1810-1820 = 2121. Breakdown as follows:-

		<u>Percentage of total.</u>
Transported:	107 =	5.04%
Imprisonment:(7 months + ).	47 =	2.21%
Imprisonment:(0-6 months).	664 (1) =	31.30%
Military Service:	10 =	0.47%
Naval Service.	29 =	1.36%
Imprisonment (0-6 plus whip)	154 (2) =	7.26%
Imprisonment (7 months plus whip)	20 =	0.94%
Hard Labour (from 1810 7 mths+)	24 =	1.13%
Hard Labour (from 1810 6 " ")	168 =	7.92%
Removed.	380 =	17.91%
Fine.	260 =	12.25%
Imp/recog.	194 =	9.14%
recog.	11 =	0.51%
Whip.	8 =	0.37%
Others.	45 =	2.12%
<u>2121 Total.</u>		
Transported:	1795-1805 = 25. 1810-1815 = 8. 1816-1820 = 74.	
Imp 7 mths:	1795-1805 = 9. 1810-1815 = 13. 1816-1820 = 25.	
Imp 0-6 mth:	1795-1805 = 172. 1810-1815 = 213. 1816-1820 = 279.	
Military:	1795-1805 = 1. 1810-1815 = 9. - - - - -	
Navy:	1795-1805 = 24. 1810-1815 = 5. - - - - -	
Imp 0-6 wp.	1795-1805 = 98. 1810-1815 = 4. 1816-1820 = 52.	
Imp 7 + wp.	1795-1805 = 2. 1810-1815 = 5. 1816-1820 = 13.	
Hard Labour.	1795-1805 = no figures 1810-1815 = 10. 1816-1820 = 14.	
(74 1810 +).		
Removed.	1795-1805 = 294. 1810-1815 = 41. 1816-1820 = 45.	
Fine.	1795-1805 = 110. 1810-1815 = 64. 1816-1820 = 86.	
Imp/recog:	1795-1805 = 154. 1810-1815 = 32. 1816-1820 = 8.	
Recog:	1795-1805 = 4. 1810-1815 = 2. 1816-1820 = 5.	
Whip:	1795-1805 = 8. - - - - -	
Others = 45.		

- (1) Figure includes 255 offenders given 0 - 1 month from 1810 - 1820.  
Before this date small sentences are included in general category  
0 - 6 months.
- (2) Includes solitary confinement.

# APPENDIX 10. ADMINISTRATIVE DIVISION OF SUSSEX.



# APPENDIX II GEOLOGY OF SUSSEX

